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ABSTRACT

Designed for integration into secondary U.S. history courses, the activities provide a format for the examination of law-related themes and issues. Themes explored include the conflict between individual and societal needs, the relationship of the individual to state and federal authority, individual rights, the shifting balance of power among the three branches of government, the influence of social and economic conditions on judicial decision making, and the U.S. constitution as an instrument of governance. The document is organized into four sections roughly corresponding to the chronological periods in most U.S. history courses: Colonial Period through Revolution, Growth of a New Nation, Civil War through Industrialization, and The Modern Era. Activities, which require critical thinking, reasoning, problem solving, and inquiry skills, include opinion polls/surveys, role plays, simulations, case studies, mock trials, appellate court simulations, adversary models, and learning stations. Many of the activities focus on landmark Supreme Court cases and modern cases to elucidate the meaning and judicial interpretation of the guarantees of the Bill of Rights. Topics include the Salem witch trials, lawful inspection, the Alien and Sedition Acts, the Dred Scott case, Plessy v. Ferguson, the impeachment of Andrew Johnson, the McCarthy era, and Watergate. Each activity includes an introduction, objectives, recommended grade level, time and materials needed, instructions, and masters for student handouts. (KC)

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LAW IN U.S. HISTORY: A TEACHER RESOURCE MANUAL

REVISED

Melinda R. Smith, Editor

Kenneth Rodriguez and Mary Louise Williams, Contributors

New Mexico Law-Related Education Project

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ABOUT THE EDITOR AND CONTRIBUTORS

MELINDA R. SMITH has been director of the New Mexico Law-Related Education Project since its inception in 1978. In this capacity, she has conducted teacher-training workshops and developed instructional materials directed at the incorporation of law into the social studies curriculum. She holds an M.A. in linguistics from the University of Michigan and has directed language and reading programs on the Navajo reservation and in the Middle East.

KENNETH RODRIGUEZ is social studies chairperson at Cibola High School in Albuquerque, where he teaches courses in law and U.S. history. He has been a consultant for the New Mexico Law-Related Education Project since 1979 and has worked on numerous curriculum projects for the Albuquerque Public Schools. He has also taught courses in New Mexico history for the Community College of the University of New Mexico.

MARY LOUISE WILLIAMS has taught social studies at Los Alamos High School in Los Alamos for 13 years and has been a consultant for the New Mexico Law-Related Education Project for two years. She was awarded a William Robertson Coe Fellowship in American History at Stanford University in 1977. She has been a consultant to the Office of Environmental Education and is a consulting editor for the Journal of Environmental Education.

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PREFACE

Publication of Law in U.S. History: A Teacher Resource Manual in 1983 is particularly timely for two reasons. Recent studies indicating that law-related education has the potential to reduce delinquent behavior among young people have generated a great deal of excitement among social studies educators. While many excellent law-related curriculum materials are available, the majority focus on the role of law today. U.S. history teachers interested in injecting a law focus in their classes need materials that examine the historical development of law in the United States. This manual will answer that need.

Second, as the bicentennial of the U.S. Constitution approaches, social studies teachers at all levels will be asked to "do something" about the Constitution. This manual contains activities on the Constitution and Supreme Court cases that will help U.S. history teachers respond to that charge.

ERIC/ChESS is thus happy to participate in the publication of this resource manual. We hope that it will be useful to the many secondary U.S. history teachers seeking materials to enliven and enrich their classes.

James E. Davis
Associate Director, Social Science
Education Consortium
Associate Director, ERIC Clearinghouse
for Social Studies/Social Science
Education

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Sponsored by the New Mexico State Bar Foundation, the New Mexico Law-Related Education Project conducts ongoing activities to promote legal literacy in the schools in New Mexico. The focus of the project's training and materials is the infusion of law-related content and methods into the required K-12 curriculum. The project conducts an annual statewide mock trial competition and summer institute in law-related education through the University of New Mexico.

The project has also prepared a number of publications. These include Teacher Resource Manual for Civics, New Mexico Courts: Information and Ideas for Teaching, The Don't Panic Book: What to Expect in an Encounter with the Police and the Juvenile Justice System in New Mexico, Practical Law in New Mexico, and Student Rights and Responsibilities in New Mexico Schools.

Law in U.S. History: A Teacher Resource Manual is the project's latest publication effort. Appreciation is due to Mary Louise Williams and Kenneth Rodriguez for their many months of assistance and to Jean Craven for her encouragement and suggestions. Thanks are also expressed to the New Mexico Department of Education for its publication of an earlier version of the book and to the many teachers in New Mexico who field tested the materials in this volume. Appreciation is also due to Susan Albright for her care in typing the original manuscript, to the ERIC Clearinghouse for Social Studies/Social Science Education for making publication possible, and to the organizations and individuals that allowed us to reprint materials in the manual.

Finally, thanks are due to the agencies that continue to support the New Mexico Law-Related Education Project: New Mexico State Bar Foundation; State Bar of New Mexico; Bar Association of the First Judicial District; Espanola Municipal Schools; Los Alamos Public Schools; Los Lunas Public Schools; Albuquerque Public Schools; Central Consolidated Schools; Cloudcroft Municipal Schools; Gallup-McKinley County Public Schools; Grants Municipal Schools; Las Cruces Public Schools; Penasco Independent Schools; Socorro Consolidated Schools; Quemado Independent Schools; Springer Municipal Schools; and Taos Municipal Schools.

For more information, contact the New Mexico Law-Related Education Project, State Bar of New Mexico, 1117 Stanford NE, P.O. Box 25883, Albuquerque, NM 87125.

Melinda R. Smith
Director, New Mexico Law-Related
Education Project

INTRODUCTION

> Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question.
>
> - Alexis de Tocqueville

Law is integral to the study of U.S. history. Recognition of the vital constitutional issues of different periods in history brings with it an understanding of the social, political, and economic forces that shaped those periods. Law-related issues and themes can also serve as a unifying thread to inform students' understanding of our governmental institutions and demonstrate the relevance of history to their lives.

The activities in this volume are an attempt to provide a stimulating format for the examination of important law-related issues and themes in U.S. history. Among the themes in the activities, which teachers can develop and extend, are the following:

--The dynamics of conflict between the needs of society at large and individual liberties.

--The relationship of the individual to state authority and federal authority.

--The evolution of the extension of individual rights.

--The shifting balance of power among the three branches of government.

--The influence of social and economic conditions on judicial decision-making.

--The Constitution as an instrument of governance.

Strategies

The activities in this volume employ a variety of instructional strategies designed to maximize student involvement and motivation in the learning process. Students are challenged to use the skills of critical thinking, reasoning, problem-solving, and inquiry. Among the strategies included are the following:

--Opinion poll/survey: can be used to clarify views and values on a particular issue.

--Role play: allows students to assume roles and appreciate other points of view while providing springboard for discussion.

--Simulation: involves students in realistic experiences modeled after actual or hypothetical procedures.

--Case study: promotes thorough examination of legal questions by requiring students to examine facts, identify issues, understand arguments, and support decisions. The case study is an essential strategy in studying law and legal reasoning.

--Mock trial: allows first-hand experience in trial procedure and enhances communication, reasoning, and group process skills.

--Appellate court simulation: requires that students deliver arguments for appellant and appellee in actual Supreme Court cases.

--Adversary model: involves two "attorneys" arguing before one "justice" in a modified version of appellate simulation.

--Learning stations: provides structured learning environment while allowing students to move about freely; also promotes the gathering and synthesizing of information.

Using This Resource Manual

The activities in the manual are grouped into four sections roughly corresponding to the chronological periods covered in most U.S. history courses: "Colonial Period Through Revolution," "Growth of a New Nation," "Civil War Through Industrialization," and "The Modern Era." Some of the activities span more than one period in order to provide a sense of the historical continuity of the legal themes and issues that arise from events of different eras. Other activities--particularly the Bill of Rights case studies in Section II--use modern cases to elucidate the meaning and judicial interpretation of the guarantees of the Bill of Rights. This has been done because contemporary cases can make the Bill of Rights more concrete and relevant to students and because many of the pertinent legal issues were not litigated until this century.

It should be noted that because the activities are designed for infusion into U.S. history courses, most assume some knowledge of the relevant historical period. Few can be presented "cold" to classes not studying U.S. history.

The activities are presented in a uniform format. Each begins with a brief introduction followed by a list of objectives for the activity. A recommended grade level is given (either eighth, eleventh, or both), but teachers should use their discretion in determining which activities are appropriate for their students. Time and material needed to complete the activity are suggested. Finally, step-by-step instructions for using the activity are provided. Black-line masters for student handouts follow these instructions.

The book concludes with a list of ERIC resources, which interested teachers can check for additional material related to teaching about the law in U.S. history or using the teaching strategies emphasized in this book.

SECTION I

THE COLONIAL PERIOD THROUGH REVOLUTION

1. ROAD TO RELIGIOUS FREEDOM

Introduction:

This learning stations activity is designed to show students the progression from religious intolerance to religious freedom during the colonial period. Students examine readings placed at stations around the room to determine which of the following each illustrates: intolerance, tolerance, or freedom. The activity can be used at the end of a study of the colonial period or as an introduction to the Bill of Rights. Note that Activity 12 also deals with freedom of religion.

Objectives:

1. To develop understanding of how freedom of religion evolved from the colonial period to the drafting of the Bill of Rights.

2. To increase understanding of the principle of separation of church and state.

3. To develop awareness that law evolves as a result of changing needs and values.

Level: Grade 8 and above

Time: Two class periods

Materials: One copy each of Handouts 1-1 through 1-13

Procedure:

1. Before class, post copies of all handouts in random order at stations around the room.

2. Introduce activity by drawing a winding road on the blackboard. Explain that this road represents the road to religious freedom in the United States. Point out that although some colonists came to the New World in search of religious freedom, they themselves were intolerant of other religions. Explain that the concept of religious freedom evolved slowly in the colonies and that many people suffered because of religious intolerance.

3. At the beginning of the road, write "intolerance" and discuss its meaning. Then write "tolerance" in the middle of the road and discuss its meaning. Finally write "freedom" and discuss its meaning.

4. Have students copy the road on blank pieces of paper. Explain that they are to go to each learning station, read the selection, and decide whether it is an example of religious intolerance, tolerance, or

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freedom. They should write the title of the selections at the appropriate points along the road. Students can work in pairs. Be sure to work with unfamiliar vocabulary before the activity.

5. When students are finished, discuss each selection and its placement on the road. Then put the selections in chronological order (or have students do this) so students see the progression of dates from the 1600s to 1791. The dates for the handouts are: 1--1600s; 2--1600s; 3--1635; 4--1637; 5--1659; 6--1600s; 7--1649; 8--1681; 9--1776; 10--1786; 11--1787; 12--1789; 13--1791.

6. As a follow-up activity, students might make collages or illustrations representing each selection.

THEOCRACY IN ENGLAND

"All England was a church," wrote historian John Green. Pomp, pageantry, ritual, and ceremony had bound up church and state. But a bitter battle was building between the established church and the Protestants.

In 1603 King James found himself confronted with a Parliament comprised mainly of Puritans. The Puritans proposed that England no longer be governed by the "divine right of kings," but by a group of men elected to represent the wants of its people. The King's indignant (angry) answer was to turn the ancient body of law, the "Star Chamber" (so called because of stars painted on its ceiling), into a secret court of judges without jury or rights of defense. The Star Chamber punished with torture and mutilated those who dared differ with the royal decrees.

In 1611 the Star Chamber grew more vengeful. This secret court cut off ears of those who dared speak up for any Puritan beliefs, branded a man on both cheeks with the letters "SL" for seditious libeler, and imprisoned others in filthy dungeons.

King James said of those who opposed his established church, "I will make them conform (accept the rules), or I will harry (punish) them out of the land."

QUESTIONS FOR DISCUSSION

1. What is meant by the "divine right of kings?"
2. What was the Star Chamber?
3. Do you feel it was a fair court? Why or why not?
4. What kinds of punishment were used?
5. What was the reason for these punishments?
6. What is a seditious libeler?
7. What did James mean when he said, "I will make them conform, or I will harry them out of the land?"
8. What is a theocracy?

THEOCRACY IN THE COLONIES

Most of the colonists who came to the New World in search of religious freedom were thinking only of freedom for themselves. Plymouth was for Separatists; Massachusetts Bay Colony, for Puritans. Men and women who refused to accept the official religious beliefs, or doctrines, were often thrown in jail or driven from the colony.

In Massachusetts in the 1600s, church and state were one. According to the terms of the Massachusetts Bay Charter, those living within its territory "shall practice no other form of divine worship than that of the Reformed (Puritan) religion." People could not be members of the colony unless they belonged to that church.

The Puritan ministers were all-powerful, although they did not hold office. It was they who examined the candidates for church membership, who alone could vote and hold office. Anyone who broke a church law was arrested and was tried in a government court.

"Tobacco drinking" (smoking), tippling, card-playing, dancing, and bowling caused the town fathers much alarm. Sunday strolls or street kissing were subject to heavy fines. Christmas, reminiscent of "popery," was banned.

Punishment was based on the theory that ridicule was more effective than imprisonment. Market squares had stocks, pillories, and ducking stools. Public floggings were common, and offenders were often forced to display on their clothing the initial letter of the crime committed. The town fathers were content to sacrifice freedom in their attempt to achieve unity. The Reverend Nathaniel Ward, speaking for all good Puritans, remarked, "All Familists, Anabaptists, and other Enthusiasts shall have free liberty to keep away from us."

QUESTIONS FOR DISCUSSION

1. What kinds of religious freedom were most of the colonists seeking?
2. Who were the most powerful leaders?
3. What kinds of punishment were inflicted?
4. How did this punishment compare to the punishment of the Star Chamber of England?

Handout 1-3 1 of 1

THE CASE OF ROGER WILLIAMS

Roger Williams stood and faced the 50 men of the General Court who were about to question him. He had been accused of being a dangerous person. Not one lawyer in the Massachusetts Bay Colony would defend him.

One of the magistrates shouted, "You dare to say that the King of England does not own this land!"

"The land belongs to the Indians," Roger Williams answered firmly. "It is wrong to take it without paying them for it."

"And you dare to say that each man should worship God in his own way!"

"Aye, it is wrong for the State to make laws telling people how to worship. Such laws bring tyranny to America."

"You also dare to say that others besides church members should have the right to vote!"

"The church and the government should be separated," answered Roger Williams.

The elders and magistrates frowned, but Mr. Williams would not change his opinion. The trial lasted all that day and part of the next. Finally the sentence was given.

QUESTIONS FOR DISCUSSION

1. What do you think the sentence was?
2. What do you think the sentence should have been?
3. How did Roger Williams feel about the land of the Massachusetts Bay Colony?
4. What did Roger Williams think about laws and worship?
5. What is meant by separation of church and state?
6. How do churches benefit from the state?
7. How is government influenced by religion?
8. Should church and state be separate? How would complete separation affect the churches? the government?

DECISION: Roger Williams was forced to leave Massachusetts within six weeks. Later he bought land from the Indians and founded Providence, which became the capital of Rhode Island. In this colony were separation of church and state, religious freedom, and freedom of speech.

THE CASE OF ANNE HUTCHINSON

Mrs. Anne Hutchinson, of Boston,
Massachusetts Bay Colony,
For Moving against Public Law and Order and
the Tranquility of the State

PROCLAMATION OF SESSIONS
at General Court, New Town, 2 November 1637.

Henry Vane, Bart., Gov^{r}.
John Winthrop, Dep. Gov^{r}.

Will Hutchinson pried off the paper that was glued to his front door. Anne was pregnant and was staying in bed late. Will climbed the stairs, holding the paper as if it were burning his hand. This was terrible. Anne lay back on her pillow and fought down panic. She knew the trial would be open and shut. There would be no representative for the accused. She would be assumed to be guilty unless she could prove her innocence. She would be confronted with hostile witnesses but have no right to witnesses in her favor. There would be no jury of her peers, only the decision of the judges.

Anne went to see her friend, Mary Dyer. Well into the night the two women consulted their Bibles. That was what the other side would be doing! Anne would have to answer for those famous meetings in which she played the role of teacher.

On November 2, 1637, the bell in the New Town Court clanged. Down the center aisle came Anne Hutchinson and her minister, John Cotton. Directly behind came Mary Dyer, with her hand just touching Anne's shoulder.

Seated at one end of the bench as judge, Sir Henry Vane motioned to the bailiff to pound for order with his kevel (later gavel - a ship's wooden belaying peg).

A large gold-edged Bible lay open in the center of the table. The bailiff asked Anne to lay her right hand upon it and swear that the testimony she would give was "Truth, whole Truth, nought but Truth. So help you, God."

Mistress Hutchinson was accused of 82 "errors in conduct and belief." Four were major: (1) "consorting with those that had been sources of sedition," (2) breaking the Fifth Commandment, "Honour thy father and thy mother," (3) claiming revelation of God's Word directly, (4) misrepresenting the conduct of the ministers.

Deputy Governor Winthrop clasped his hands and began, "You are accused of consorting with persons condemned for sedition."

"Please, sir, who might these persons be?" asked Anne.

"The silenced Brother Wheelwright and others since cited for contempt of court, fined, disgraced, or banished."

Anne replied: "I did not sign the petition in his favor. Also, it is difficult not to say good morning or good evening to one's own brother-in-law."

"Next, you have broken the Fifth Commandment, 'Honour thy father and thy mother.' We, the ministers and magistrates, are your fathers. We forbade you to hold meetings in which you instructed women. You obeyed not our commandment."

"Agreed, sir, that you and all of you are somehow my one father. I put it to you. In Acts 18:26 wherein Aguila and his wife Priscilla took upon themselves to instruct Apollos in the meaning of the risen Christ."

"You are also accused of claiming the revelation of God's Word directly to yourself."

Anne replied, "I have never claimed so in public, but only in privacy, in my own house."

"Next error, ..."

Anne did not hear the rest. She sank to the floor. It had gotten bitterly cold. No time out had been taken for rest. She had been standing some five hours.

QUESTIONS FOR DISCUSSION

1. What do you think was the decision of the Court? Why?
2. Would you have decided the same way? Why or why not?
3. How did Anne Hutchinson receive the notice she would be tried in Court?
4. In what ways did her trial differ from a trial in America today?
5. What did Anne Hutchinson and her friend, Mary Dyer, read to prepare for the trial?
6. What was Anne's defense for the first charge, "consorting with those that had been sources of sedition?"
7. Why was Anne accused of breaking the Fifth Commandment?
8. Why did Anne faint?

DECISION: Anne was convicted and sent out of the colony. She moved to Roger Williams' colony in Rhode Island. Later she moved to a Dutch settlement in New York and was killed in an Indian raid.

THE CASE OF MARY DYER

It was a very bad time for Quakers in Boston in 1656. Imprisoned Quakers were having their ears cut off almost as a matter of routine. They were also being branded with the SL of "seditious libeler" on their cheeks. Arriving Quakers were hauled off ships, examined for "witch marks," and put on ships heading for Barbados to be sold as slaves.

Despite the danger, Mary Dyer decided to go to Boston, wearing the Quaker habit of gray cloth gown, coat, and cap. She planned to make the ultimate test of the Puritan law.

At one time she was stripped and whipped on the Common. Finally she was thrown into prison, brought before a court, and sentenced to be hanged.

On a morning in 1659, Mary and two Quaker men, dressed in their gray habits and wearing their hats, were taken from their cells and led to the place of execution. A large crowd pushed and shoved for the best vantage point. The official in charge was the Reverend John Wilson. He bawled at the three of them, "Shall such folk as you come before Authority with your hats on?"

They would! The two men were summoned ahead of Mary. It pained her to see that they were given no chance to make their small prepared speech about religious liberty. Each time they tried to raise their voices there was, at Wilson's command, a drumroll from the three soldier drummers stationed nearby.

Both of the victims died hard. Then Mary's arms were bound behind her. Her face was covered with Mr. Wilson's handkerchief. She heard the drumroll. Then John Wilson's voice roared, "Stop!" Mary tried not to faint. Reverend Wilson advised her that it had been intended to give her a severe scare. The court did not want the notoriety of having to stop the mouth of a mere and foolish woman, but if Mistress Dyer was ever seen in the entire Massachusetts Bay Colony again, it would have no choice in the matter.

Mary, however, returned a half year later to test the legality of the law that sentenced to death Quakers who visited the colony after being expelled. This time she was marched to the gallows, once more to the rumble of the drums. She stood blindfolded and called out, "My life not availeth me in comparison to the liberty of the truth." Then she was hanged.

A woman had died in vain. Or had she? In England one of King Charles II's advisors brought the latest news of atrocities against Quakers in one of the American colonies. It was a long list of names; near the bottom, under "Hanged," was the name of Mary Dyer. Now they were beginning to hang women!

"Your Majesty," said the advisor, "the Puritans there have a bad law. They will countenance no other form of worship but their own. They have opened a vein and blood is pouring out of it."

The King said, "I will stop that vein."

And he did. Thousands of Quakers were let out of jails in both England and New England, and stern edicts were published against their further persecution. The year 1660 was the beginning of the end of Puritan intolerance and the iron grip of theocracy.

QUESTIONS FOR DISCUSSION

1. Compare the treatment of the Quakers by the Puritans in Boston in 1656 with the treatment of the Puritans in England by King James and his Star Chamber in 1611. Is there a difference?
2. Why did Mary Dyer decide to go to Boston even though she knew of the danger?
3. Our Bill of Rights protects us from "cruel and unusual punishments." Do you think any cruel and unusual punishments were given to Mary Dyer? If so, which ones?
4. What does it mean to test the legality of the law?
5. Is there a difference between religious tolerance and religious freedom? How are they different?
6. Does the Bill of Rights protect the religious practice of illegal acts (human sacrifices, handling poisonous snakes, drinking deadly concoctions, etc.)?
7. If an unusual, strange group of worshippers wanted to build a church in your community, would you let them? Why? Why not? (A church whose members worshiped the Devil, for example.)

RELIGIOUS REQUIREMENTS FOR VOTING AND HOLDING OFFICE

From the beginning, many of the people had a voice in the government of each of the British colonies, but it was a limited voice. In the first place, voting was limited to adult males who owned a specified amount of property. In the second place, religious qualifications kept many people from voting. In many colonies, particularly during the 1600s, men who did not belong to the established state church were not permitted to vote.

The Puritans in New England said they themselves were a chosen people. They wanted to build a Holy City in the wilderness. They felt God had assigned them this large purpose. Only those few who had had very special experience had a voice in running the church. The Puritans called it a "converting" experience because it converted a sinful soul into one that would be saved in heaven. The converted few were called "Visible Saints." In the early years in Massachusetts, in order to vote, you had to be one of these saints, in addition to having some property. Puritan government was a dictatorship of the saints.

This tight control was loosened only very slowly. By the end of the 17th century, voters were no longer required to be church members, but everywhere in the colonies they had to be property owners.

QUESTIONS FOR DISCUSSION

1. What were the voting requirements in the colonies?

2. Do you feel this was democratic? Why or why not?

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MARYLAND ACT OF RELIGIOUS TOLERATION

Lord Baltimore visited America and could foresee great opportunities there for freedom-loving people. He returned to England and petitioned King Charles I for a grant of territory around Chesapeake Bay. Being a favorite of the King, he got all he asked for. In 1613 King Charles authorized a very liberal and most unusual charter. It named Lord Baltimore, whose family name was Calvert, and his heirs, "Lords Proprietor of Maryland." Lord Baltimore and his heirs were the only group ever given such broad powers in English America.

The charter's most important provision was that the Lords Proprietor were free to give refuge and equal rights to Christians of all religious groups--a privilege never before granted.

This was most important to Lord Baltimore because he recently had become a Roman Catholic. In England, Catholics had been savagely persecuted for a long time.

Therefore, it was natural that Lord Baltimore's new colony should become known as the Land of Sanctuary. Almost from the very beginning, people of many beliefs went there in search of religious freedom, equal opportunities, and security under the law. Among these were Quakers, Methodists, Baptists, Wesleyans, Puritans, and even a few Jews.

In order to attract settlers, the proprietor found it necessary to share land and political power. Eventually the settlers were allowed to elect an assembly. In 1649 the Maryland Assembly passed the Act of Toleration, assuring freedom of religion to Catholics and Protestants.

QUESTIONS FOR DISCUSSION

1. What was the most important provision in the Charter of Lord Baltimore?

2. The Act of Toleration assured freedom to whom?

3. How did Maryland differ from the Massachusetts Bay Colony?

WILLIAM PENN'S COLONY

"There is no hope in England. The deaf adder cannot be charmed," said William Penn. So he immediately began figuring how the "deaf adder" of government could be charmed into giving him land in America. The King had owed Penn's father a debt of honor: 16,000 pounds for back salary and loans, and a share of the profits from the West Indies Admiral Penn had captured for England. So William Penn carefully worded a petition to the King asking for the land. He was shrewd enough to know the King might want to get a troublemaker out of the country.

Penn appeared to accept the charter on March 4, 1681. He kept his hat on, Quaker fashion. The King promptly removed his own. When Penn looked at him in surprise, King Charles explained, "It's the custom here for only one of us to keep his hat on, Friend William. And if you won't take yours off, then I must."

In planning the frame of government, Penn wrote the Charter of Liberties. There were to be free elections, with a council and assembly chosen by the colonists. The Code of Forty Laws included freedom of worship and a trial by jury. Nobody could be put to death except for treason or murder. Every freeman or landowner who believed in God could vote (for Christians and Jews).

QUESTIONS FOR DISCUSSION

1. In Penn's Charter of Liberties, who could vote?

2. Who was included in this Charter who was not included in Lord Baltimore's Charter?

3. Do you feel this is true religious freedom? Why or why not?

AMERICAN REVOLUTION

The common cause of the American Revolution (1775-1783) lessened religious intolerance. The political power of the clergy waned. Seeds of our constitutional principles of religious freedom were being planted.

Various Protestant churches enjoyed tolerance, but Roman Catholics were discriminated against until the American Revolution. Throughout the Colonial era, Catholics remained few in number and were confined mostly to Maryland.

In several colonies--Virginia, Maryland, North and South Carolina, Georgia, and part of New York--the Anglican church became the official church. It was supported by taxes paid by the colonists and was led by the Bishop of London, who was in charge of Anglican religious life in America.

As the immigration of various groups from the British Isles and Europe increased, the number of religious denominations also grew. The promoters of Pennsylvania and New Jersey included influential Quakers. Through their efforts, a number of Quakers migrated to these colonies. The Scotch-Irish and Highland Scots who came to the colonies were Presbyterians. Methodists came from England. Small numbers of various Protestant sects came from Germany, and Huguenots came from France. A small number of Jews immigrated to New York, Philadelphia, and Charleston.

These new settlers of various faiths contributed to a new spirit of religious freedom. Lutherans, Catholics, Presbyterians, and Jews lived near one another with little strife, often paying little attention to the religious beliefs of their neighbors.

American practicality and self-reliance fit well with religious variety and minimization of doctrinal differences. Religious freedom was aided by tendencies toward other kinds of freedom.

Church leaders in the colonies took their religion so seriously that we sometimes overestimate the devotion of the majority of the people. Even in the earliest days, a majority of the colonists were probably moved mainly by economic considerations.

By the time of the revolution, non-church members were in a large majority, so it was quite natural for them to oppose any organic connection between Church and State.

The Revolutionary War period witnessed a lessening of the power of the clergy, increased tolerance for most Protestant sects, and continued governmental support of religion.

QUESTIONS FOR DISCUSSION

1. Make a chart showing the religious groups which settled in each of the colonies. Use the chart as a basis for discussion of the religious diversity of the colonies. Refer to the readings "Theocracy in the Colonies" and "The Case of Roger Williams."

2. What is the difference between a theocracy and a government which supports religion?

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VIRGINIA STATUTE FOR RELIGIOUS FREEDOM

> Well aware that Almighty God has created the mind free; that all attemptes to influence it by temporal punishments...tend only to...habits of hypocrisy and meanness...to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical;...truth is great and will prevail if left to herself...no man shall be compelled to frequent or support any religious worship...whatsoever;...all men shall be free to profess...their opinion in matters of religion;...the same shall in no wise diminish, enlarge, or affect their civil capacities.

In 1776 every colony except Pennsylvania and Rhode Island had an established church. That was the church that each taxpayer helped support, whether he was a member of it or not. In New England it was the Congregational church, the main church organization, which placed complete religious authority in the local congregation led by its minister. In the South the established church was the Church of England.

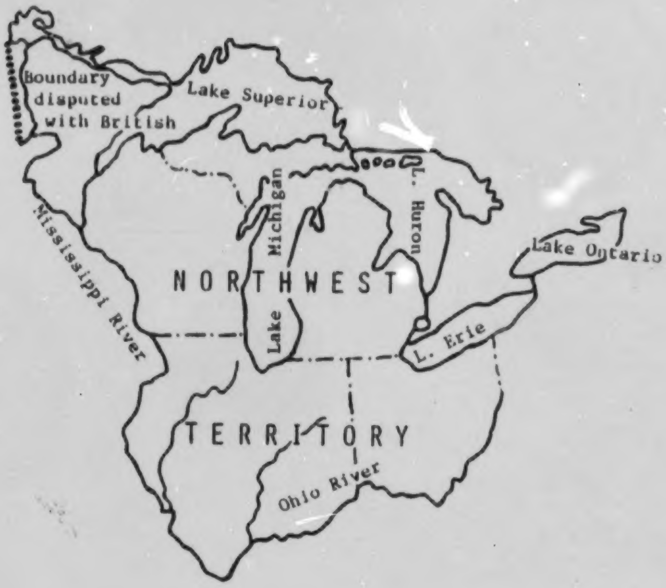
The Virginia Bill of Rights in 1776 had sought to guarantee the "free exercise of religion" without ending the Episcopal religious establishment. But separate clauses protecting "free exercise" and prohibiting "establishment" of religion were not included until the Virginia Statute for Religious freedom in 1786. This was a cutting of the ties between churches and government. In time this principle came to be accepted by every state.

QUESTIONS FOR DISCUSSION

1. Explain: "Well aware that Almighty God had created the mind free; that all attempts to influence it by temporal punishments...tend only to...habits of hypocrisy and meanness."

2. What is an established church?

3. Should a person be forced to support something in which he or she does not believe?



NORTHWEST ORDINANCE

> ARTICLE I. No person...shall ever be molested on account of his mode of worship or religious sentiments...

One of the oldest laws of the United States is the Northwest Ordinance of 1787. This ordinance was passed by the government of the Confederation of the United States of America. It provided for the governing of the Northwest territory, which is now the states of Michigan, Illinois, Indiana, and Ohio. Many of the territorial plans of the West followed ideas from this law. It became famous for its contribution to the growth of democracy. It was the most democratic colonial policy the modern world had known.

Years after the Northwest Ordinance was adopted, Daniel Webster gave his sober opinion of its importance: "I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787." This ordinance was the first American law to forbid the arrest of people because of their modes of worship.

QUESTIONS FOR DISCUSSION

1. Do you think anyone should ever be arrested for "his mode of worship or religious sentiments?"

2. Do you think snake worshipers should ever be arrested? If so, when?

3. When should a person's religious freedom be limited?

UNITED STATES CONSTITUTION

> ARTICLE VI. ...no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Many of the colonies had religious tests for holding office. Pennsylvania required an officeholder to believe in one God and in a future state of rewards and punishments.

New York's Constitution of 1777 excluded all Catholics from state office by requiring a test oath calling for ecclesiastical as well as civil allegiance. Massachusetts adopted an identical policy.

New Jersey's Constitution of 1776 allowed "every privilege and immunity" only to Protestants.

The constitutions of Maryland, New Hampshire, North Carolina, and Vermont contained provisions barring all but Protestants from the right to vote and to hold office.

Now the third clause of Article VI of the U.S. Constitution states nobody who can meet the other requirements for holding a position in the U.S. government may be kept out of this position because of religion.

QUESTIONS FOR DISCUSSION

1. Should a person who does not believe in God have the same right to work for the state as someone who does believe?
2. Should all people have to belong to some religion?
3. Why do some people want other people to believe the same things they do?

BILL OF RIGHTS

> AMENDMENT I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;....

These first 16 words of the First Amendment are an outgrowth of the colonial religious experience. The desire to escape religious persecution was one of the principal reasons for emigration to the New World. Although colonies that had been settled to avoid religious persecution were frequently hostile and intolerant of other beliefs, most colonies gradually passed laws tolerating all religious groups and separating church and state. The culmination of this move toward tolerance was the First Amendment, guaranteeing freedom of religion and free exercise of religious beliefs. However, five states still had official churches.

But this amendment did not apply to the states. James Madison, author of the amendment, proposed two amendments: one, a restriction of the federal government; the other, a restriction on the states. The one to restrict the states was never passed by the Senate and was never submitted to the states. It was not until the passing of the Fourteenth Amendment in 1886 that freedom of religion was protected against state action.

There are two separate clauses in the First Amendment: the Establishment Clause and the Free Exercise Clause. The Establishment Clause prohibits the setting up of a national church. The Free Exercise Clause protects a citizen's freedom of religious beliefs and of activities that naturally flow from those beliefs.

QUESTIONS FOR DISCUSSION

1. What two separate clauses concerning religious freedom does the First Amendment include?

2. What government did the First Amendment restrict?

3. Why do you suppose James Madison's amendment restricting state governments was not passed by the Senate?

2. THE SALEM WITCH TRIALS--THE CASE OF SARAH GOOD

Introduction:

This mock trial is an excellent way to recreate the atmosphere of superstition and religious intolerance that existed during the early colonial period. As a teaching strategy, the mock trial provides an effective means for maximizing student motivation and participation while developing critical thinking skills. This particular activity also gives students the opportunity to explore the motivations for "witch hunts" that have taken place in various periods of American history. For this reason, the activity can be used when studying colonial New England, the Red scares of the 1920s, or McCarthyism in the 1950s. You might have students read Arthur Miller's The Crucible in conjunction with this activity to give them a better understanding of the witnesses who must testify in court.

Objectives:

1. To develop understanding of the colonial religious and social attitudes that led to the Salem witch trials.

2. To help students explore the principle of separation of church and state.

3. To develop understanding of court procedures.

4. To develop critical thinking and communication skills.

Level: Grade 11 and above

Time: Four class periods

Materials: Copies of Handouts 2-1 through 2-3 for all students

Procedure:

1. Read Handout 2-1 with the students and briefly discuss the religious atmosphere in the colonies. Explain the purpose of the mock trial.

2. Read through the role profiles (Handout 2-2) and make role assignments.

3. Review the steps in a trial presented on Handout 2-3, going over the purpose and techniques of the opening statement, direct examination, cross-examination, and closing statement.

4. Review the law to be used in the case to ensure student understanding of the issues.

Adapted from "The Salem Witch Trials--The Case of Sarah Good," in Legal Issues in American History (Chicago: Law in American Society Foundation, 1969), pp. 12-17. Used with permission.

5. Have witnesses write depositions. They should be creative, using and expanding on the background material. Duplicate the witness statements for each attorney. (This can be done as homework.)

6. Have attorneys study the rules of evidence and trial procedures and prepare opening and closing statements and questions to witnesses. (Can be done as homework.)

7. Have judges study trial procedures and prepare jury instructions. (Can be done as homework.)

8. To prevent students acting as jurors from being idle during case preparation (if not assigned as homework), teachers can assign one juror to each witness to help develop the depositions or have jurors do library research on the Salem trials and make reports to the class after the mock trial.

9. Conduct the mock trial. (If you have not previously used the mock trial as a teaching strategy, you may want to consult one or more documents that treat mock trials in detail. Several are listed in the resources section that concludes this volume.)

10. Debrief the trial; the following questions can be used in the debriefing if desired:

--How well did each person play his/her role?

--With what crime was the defendant charged?

--What were the major issues raised in the case?

--What arguments did the defense present?

--What arguments did the prosecution present?

--What facts were not presented?

--What was the decision? Do you agree or disagree? Was the decision in class the same as the decision in the original case? (Sarah Good was found guilty and was hanged with four other convicted "witches.") Why do you think the decision was different (or the same)?

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THE SALEM WITCH TRIALS: THE CASE OF SARAH GOOD

People have believed in witches almost since civilization began. The idea that witchcraft was evil began in the Middle Ages, when the Christian Church held that there was a Devil who opposed God in the combat for human souls. A person possessed by the Devil supposedly entered into a pact with the Devil and tried to destroy God's people. In order to protect God's kingdom on earth, God's people had to find witches, make them confess, and execute them.

History shows that in times of great stress, people and governments have gone on witch hunts as a way of dealing with their troubles. They thought that once the witches were eliminated, the trouble would end, and the world would return to normal. The people of Salem Village, Massachusetts, went on a witch hunt in 1692. They did not do so lightly. The times were such that they felt only drastic measures could save their colony, their village, and their Christian souls. Hindsight indicates that somewhere in the struggle, fear conquered reason, and innocent people were sacrificed.

It is not hard to imagine people of another time and place doing such things. It is harder to accept that some of them were founders of our own country. Perhaps we owe it to the Salem Puritans to find out why they did it.

In 1648, Massachusetts lost its charter and much of the freedom of government it had enjoyed for 50 years. James II sent a royal governor to supervise law-making, taxation, and the courts. Puritans had always elected their own governor. They did not like or trust the royal governor, whose name was Andros. They believed that he was conspiring with the Indians against them. They lived in fear that he would try to change their system of government.

In 1688, the French and Indians attacked frontier settlements and started a war that lasted many years. Each week, Massachusetts Puritans learned of the massacre of friends and neighbors in outlying villages. Every twig that bent in the night aroused fear.

Smallpox epidemics killed hundreds of people in Massachusetts Bay Colony from 1680 to 1691. It was the disease most dreaded among settlers for the suffering it caused and the promise of death. In 1692, an earthquake struck the British colony in Jamaica; 1,700 people were killed. Massachusetts Puritans, while not directly affected, saw this as one more sign of God's displeasure.

Perhaps the Puritans could have accepted all of these disasters, but there was another that struck at the very foundation of their lives in the New World. Their church was being destroyed. It was losing its hold on the children and grandchildren of the founders. Church attendance was falling off. Fewer people were joining the church. Large numbers of people coming into the colony were not Puritans and were not willing to live according to what the Puritans believed. These people were associating with good Puritans and gaining more influence over the political and business life of the colony. To make matters even worse, Puritans had heard rumors that England was planning to establish a state church in the colonies. When they did, the Puritan idea of a state based on a close relationship between church and government would end.

Why had these things happened? Who was responsible? What could the Puritans do to save their beliefs and regain control of their colony?

Puritans were certain that God was angry with them for sins that they had committed, and that he was allowing the Devil to do evil things to them. Somehow, they knew they had to drive out the Devil and become reunited with God. They held long prayer sessions in which they apologized for their wrongdoings and promised to reform. They kept an eye out for people in their communities whose religious views were drastically different from their own, such as Quakers and Catholics. And, in Salem Village, in the winter of 1692, they discovered and executed witches.

Salem Puritans had suffered all of the misfortunes of the rest of the colony. In addition, several of the young girls of their village had begun to behave strangely. They screamed during church services, cursed their parents, got down on their hands and knees and barked like dogs, went into trances, and performed such wild contortions that no one knew if they would live from one moment to the next. The doctor, finding no medical reason for their behavior, suggested that the girls were bewitched. While a few villagers thought a good spanking might cure their bewitchment, most felt that God was sending yet another punishment. They were determined to find the witches.

At first, the girls would not say that anyone in particular was bewitching them. However, their families and ministers convinced them that they would be in a lot of trouble if they did not say that someone was bewitching them. They also told the girls that the Devil was using a few people in Salem to destroy the whole village. The only way they could be saved was to name who was hurting them.

Finally, the girls accused two women: Sarah Good, a poor, pipe-smoking hag of a woman who went from house to house begging; and Tituba, a West Indian slave who had told the girls stories of demon creatures and voodoo magic.

Sarah Good was regarded as a nuisance by the people of Salem. Her husband, William, did not own land. He supported his family by hiring himself out as a laborer. Whoever hired him usually got his wife Sarah and her children as well. Salem residents did not like to hire William, even though laborers were scarce in the village. Sarah could be shrewish, lazy, and unclean. People did not like to have her in their homes. Lately (in 1692) she had been accused of spreading smallpox by her negligence and unclean habits.

She had taken to begging from door to door, a habit that angered Puritans, who believed in hard work. Many simply turned her away and followed her to make sure that she did not bed down in their haylofts. They were afraid that she might set the place afire with her evil-smelling pipe.

There was a strong feeling among Salem residents that God was punishing Sarah for being lazy and dirty. In the Puritan ethic, God rewarded all who worked hard with success. Sarah's poverty was proof that God had turned away from her. The people did not feel that Sarah's children should be punished for her ways, however, and were kind enough to take them in.

Sarah was a hardened woman. Bad times had made her tough and powerful. When the constable came to arrest her, she fought and cursed like a madwoman. Her lined face and matted gray hair made her look much older than she actually was. One of her children, Dorothy, was only 10 when she was arrested; at the time that the constable came for her, Sarah was carrying another child.

Sarah Good was first brought to trial. Against the better judgment of many Massachusetts ministers and officials, the chief examiners agreed to change regular legal procedures in her case.

At her trial, Sarah denied being a witch. When asked why she did not go to church, she said that she did not have proper clothing to wear to services. In addition to non-attendance at church, Sarah was questioned about a number of other unusual behaviors. She had a habit of muttering to herself as she went begging from door to door. On one of these occasions, some cows had died shortly after her begging and muttering expedition. When asked what she muttered, she replied that she said her commandments. Her questioners then requested that she repeat her commandments in the courtroom. Sarah could not think of them. Instead, she mumbled a garbled and nearly unrecognizable psalm.

Throughout Sarah's testimony, the afflicted girls yelled and screamed. Asked why she hurt the girls, Sarah denied having anything to do with them. She also denied having made a contract with the Devil and said that she served only God.

* * * * * * *

You will conduct the trial of Sarah Good, using procedures modified to fit more closely the modern process. A panel of one law judge and two side judges will preside, a jury of 12 citizens and two alternates will hear the case, and prosecution and defense attorneys will question witnesses.

Sarah Good will be tried on the basis of this law:

Death Penalties for Idolatry, Infidelity, Witchcraft, 1671

1. It is enacted by this court and the authority thereof, That if any person having had the knowledge of the true God, openly and manifestly, have or worship any other God but the Lord God, he shall be put to death.
   - Exod. 22:20. Deut. 13:6,10.

2. If any person within this jurisdiction, professing the true God, shall wittingly and willingly presume to blaspheme the holy name of God, Father, Son, or Holy God (Ghost), with direct, express, presumptuous or high-handed blasphemy, either by willful or obstinate denying of the true God, or his creation or government of the world; or shall curse God, Father, Son, or Holy Ghost, such person shall be put to death. - Levit. 24:15,16...

3. If any Christian (so called) be a witch; that is, hath or consulteth with a familiar spirit, he or they shall be put to death.

The Devil could take the shape of an innocent person and harm others. A person whose shape was used by the Devil was guilty of witchcraft. A wart or other unusual mark could be considered a sign of the Devil.

ROLE PROFILES

Witnesses for the Prosecution

Susanna Sheldon - young girl, alleged victim of Sarah Good's witchcraft.
Ann Putnam - young girl, alleged victim of Sarah Good's witchcraft.
Samuel Abbey - citizen who hired William Good as a laborer.
Agatha Gadge - Salem citizen at whose door Sarah Good often came to beg.
Conrad W. Stable - town constable who arrested Sarah Good.

Witnesses for the Defense

Sarah Good - accused witch.
William Good - Sarah's husband, a laborer who owns no land.
Dorothy Good - Sarah's daughter.
Tituba - a West Indian slave who allegedly told two young girls stories of voodoo magic.
Matthew Goodkind - citizen of Salem who does not believe in witchcraft and is a supporter of religious tolerance.

Attorneys for the Prosecution

Rev. Mather T. Cotton - a strong believer, along with much of the population, that God's law and man's law are the same. He is a flamboyant speaker, full of fire and brimstone.
Hamilton Burger - a secular lawyer with a logical mind. He does, however, support the laws of the colonies.
Lucas Pinckney - a young lawyer and devout Christian.

Attorneys for the Defense

Darrence Clarrow - a distinguished lawyer, adept at cross-examination.
William Keyster - a flamboyant attorney, well-known for his defense of unpopular and radical causes.
Moses Musgrave - a young liberal attorney.

Judges

William Blackstone: appointed to the bench by the Massachusetts Bay Colony. He is impartial and not prejudiced, but he does believe in the religious laws and customs of the colony. He will conduct the trial proceedings and will give instructions to the jury.
Jonathan Corwin - a side judge who was elected by the people of Salem colony. He has no formal law training. He is not at all afraid of witches. He, together with the other side judge, can overrule the presiding judge in rulings and sentencing.
John Hawthorne - elected by the people of Salem colony. He has no formal law training. He is deathly afraid of witches and is quite prejudiced against them.

Jurors (12)

Jurors are all freemen of Salem. Their task is to listen to the charges and the evidence and decide on the guilt or innocence of Sarah Good.

Bailiff

He/she opens the court by calling the case, swears in witnesses, keeps order in the court.

STEPS IN THE TRIAL OF SARAH GOOD

Bailiff calls the case of the People of Massachusetts Bay Colony v. Sarah Good by saying: "All rise. The court of the Massachusetts Bay Colony is now in session, the Honorable William Blackstone presiding with John Hawthorne and Jonathan Corwin."

The judges enter, and Judge Hawthorne says: "Be seated. Today we will hear the case of the People of Massachusetts Bay Colony v. Sarah Good. Counselors for the prosecution, are you ready to present your case? Counselors for the defense, are you ready to present your case?"

The prosecution presents its opening statement, followed by the opening statement for the defense. Each side uses the opening statement to explain what they hope to prove during the trial. Argument, discussion of law, and objections are not permitted during the opening statements.

The prosecution then conducts the direct examination of its witnesses, who are in turn cross-examined by the defense. After the prosecution has presented its case, the defense calls its witnesses for direct and cross-examination. Each witness is sworn in as he/she comes to the stand.

The purpose of direct examination is to present evidence that will support your position and to do so in a way that will establish the credibility of your witnesses. The purpose of the cross-examination is to explain, modify, or discredit what a witness has previously said. In both direct and cross-examination, questions should be clear and simple. A good attorney usually does not ask a question unless she/he knows what kind of answer will be given.

After all the witnesses have testified, the prosecution and defense present their closing statements. The closing statements summarize the case and attempt to convince the jury to make a decision in your favor.

The judge then instructs the jury on the relevant laws and directs the jurors to retire and decide upon a verdict.

The jury then deliberates. All 12 jurors must agree upon the decision reached. The jury presents the verdict to the bailiff, who shows it to the judge and then announces it to the court. The judges then decide on a sentence.

3. FREEDOM OF THE PRESS IN COLONIAL AMERICA: THE CASE OF JOHN PETER ZENGER (1735)

Introduction:

The principles of freedom of the press have had a long evolution from colonial times to the present. The famous Zenger case was ahead of its time in its articulation of the principle that truth is a complete defense against charges of libel. This case study can be used when studying the colonial period, particularly when examining the roots of the First Amendment freedoms, which will be further pursued in other activities in this volume.

Objectives:

1. To increase awareness of the limitations on speech and press during the colonial period.

2. To develop understanding of the emergence of principles of freedom of the press.

3. To develop understanding of the meaning of "libel" and its legal defense.

4. To develop critical thinking skills.

Level: Grade 8 and above

Time: One-half to one class period

Materials: Copies of Handouts 3-1 and 3-2 for all students

Procedure:

1. Distribute Handout 3-1. Read and discuss the introduction. Have students read the case. Then discuss the questions that follow.

2. Take a vote to see how the students think the jury decided the case. Then ask students to vote on how *they* would decide the case.

3. Distribute Handout 3-2. Read and discuss the decision with students.

4. As a follow-up activity, students might research recent libel cases, paying special attention to their relationship to the Zenger case.

FREEDOM OF THE PRESS IN COLONIAL AMERICA

Introduction

Believing dangerous ideas was bad enough, colonial leaders felt. But spreading them was even worse. As a result, there was little freedom of speech and the press in those days.

During the early 1700s, general weekly newspapers began to be printed in the English colonies. At first they carried mostly old news from Europe. Then they began to report on local business and government. Much of the news was dull and tame. But more and more, the papers began to criticize--or find fault with--harsh English rule in the colonies.

Newspaper owners had to be careful. They were not free to print stories that attacked the government. Newspapermen who did so were often thrown into jail. Their printing presses were closed down. It was against English law to publicly criticize the king or his government officials. They were supposed to be the source of all justice. They were thought to be above criticism. The following case is about a colonial editor who dared to make such criticism.

The Case of John Peter Zenger (1735)

The New York court was packed. The colonists inside were looking forward to an important and exciting trial. Newspaper editor John Peter Zenger had been in jail for nine months. Now, finally, he was being brought to trial.

At that time New York was an English colony. The colonists did not have the right to elect their own governor. He was chosen by the King of England. In 1734 the King sent William Cosby to be governor of New York.

John Peter Zenger grew furious over the way Cosby ran the colony. Zenger printed articles in his newspaper attacking the governor. He wrote that Cosby put his favorites in office. He wrote that Cosby let French ships spy on New York bay defenses. The Governor had Zenger arrested. Zenger was accused of breaking the law against libel. At that time, libel meant criticizing the government in a way that put it in danger. Criticizing the government was against the law, even if what a person said was true.

At Zenger's trial, he was defended by Andrew Hamilton of Philadelphia. Hamilton was the best lawyer in all the colonies. He admitted that Zenger had printed the articles. But he argued that

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From Law in a New Land (Boston: Houghton Mifflin Co., 1972). Used with permission.

Zenger was guilty only if the articles were false. Hamilton felt there should be more freedom of the press. He told the jury that in this country a man should be free to print the truth.

The judges disagreed. They told the jury its only duty was to decide whether Zenger had printed the articles. If so, he should be found guilty.

QUESTIONS FOR DISCUSSION

1. What did the judges say that libel meant? What did Andrew Hamilton say that libel should mean? How are these two meanings different?
2. Why did Governor Cosby feel that all criticism--both true and false--should be prohibited?
3. What dangers did Zenger's newspaper present to the security of the government?
4. Do you think a person should be allowed to print statements criticizing the government? Suppose you wrote a law about this. Would you punish the person who made the statements if they were true? Would you punish them if they were false? Why?
5. How do you think the jury decided the case of John Peter Zenger?

DECISION: THE ZENGER CASE

A courageous jury reached a verdict of "not guilty" and set Zenger free. Rather than accepting the judges' interpretation of the law, they listened to defense attorney Hamilton. Hamilton had told the jury:

> I cannot think it proper for me (without doing violence to my own principles) to deny the publication of a complaint, which, I think, is the right of every free born subject to make, when the matters so published can be supported with truth . . . I do (for my client) confess that he both printed and published the two newspapers set forth in the information, and I hope in so doing he has committed no crime.

The verdict in this case showed that (1) the truth of a printed statement is a complete defense in a libel case, and (2) a jury may decide on the truth of the statement.

The decision of the jury was unusual. It was many years before the idea of truth as a defense against libel became a valid principle in American law. The Zenger case was an early victory for freedom of the press in colonial America.

4. THE QUESTION OF WOMEN'S RIGHTS IN 1776: LETTERS OF JOHN AND ABIGAIL ADAMS

Introduction:

The American Revolution stirred demands for equal rights among segments of the non-white and non-male population that took almost two centuries to win. This activity presents an exchange of letters between John and Abigail Adams that will give students a sense of the prevailing attitudes toward equal rights for women in 1776. The letters also provide a basis for comparison with contemporary views. Note that activity 28 also deals with women's rights.

Objectives:

1. To develop understanding of attitudes toward equal rights for women and minorities during the American Revolution.

2. To prompt students to compare contemporary and historical views of equal rights.

Level: Advanced grade 8 and above

Time: One class period

Materials: Copies of Handout 4-1 for all students

Procedure:

1. Have students read the three letters and discuss the questions that follow them.

2. As an optional follow-up activity, have students write a letter to Abigail or John Adams that includes the following:

--Agreement or disagreement (according to the student's point of view) with their views on equal rights and the comparative power of men and women in society.

--An historical update on the acquisition of rights of women and minorities, including the Fourteenth and Fifteenth Amendments and the unratified Equal Rights Amendment.

AN EXCHANGE OF LETTERS BETWEEN JOHN AND ABIGAIL ADAMS

At the time our nation was born--and for a long while afterward--women were not allowed to vote, manage property, sign contracts, serve on juries, or act as legal guardians for their children. However, some women advocated equal rights for women as far back as 1776. One of these women was Abigail Adams, wife of John Adams, a Patriot and delegate to the Continental Congress (and later the President of the United States). In letters to her husband, Abigail Adams expressed her views on equal rights for women. Read the following exchange of letters and discuss the questions that follow.

> Abigail Adams to John Adams
>
> March 31, 1776
>
> ...I long to hear that you have declared an independency - and, by the way, in the new code of laws, which I suppose it will be necessary for you to make, I desire you would remember the ladies, and be more generous and favorable to them than (were) your ancestors. Do not put such unlimited power into the hands of the husbands. Remember all men would be tyrants if they could. If particular care and attention is not paid to the ladies, we are determined to (instigate) a rebellion, and will not hold ourselves bound by any laws in which we have no voice or representation.
>
> That your sex are naturally tyrannical is a truth so thoroughly established as to admit of no dispute. But such of you as wish to be happy willingly give up the harsh title of master for the more tender and endearing one of friend. Why, then, not put it out of the power of the vicious and lawless to use us with cruelty and indignity...? Men of sense in all ages abhor those customs which treat us only as the vassals of your sex. Regard us then as beings, placed by providence under your protection, and in imitation of the Supreme Being make use of that power only for our happiness.

1. What was Abigail Adams's view toward men? Do you agree or disagree with her views?

2. In her letter, Abigail Adams wrote that "(we) will not hold ourselves bound by any laws in which we have no voice or representation." What does she mean? Compare her views with the attitudes of the Patriots toward the British government during the Revolution.

John Adams to Abigail Adams

April 14, 1776

As to your extraordinary code of laws, I cannot but laugh. We have been told that our struggle has loosened the bands of government everywhere. That children and apprentices were disobedient - that schools and colleges were grown turbulent - that Indians slighted their guardians and Negroes grew insolent to their masters. But your letter was the first intimation that another tribe more numerous and powerful than all the rest (had) grown discontented. This is rather too coarse a compliment, but you are so saucy, I won't blot it out.

Depend upon it, we know better than to repeal our masculine systems. Although they are in full force, you know they are little more than theory. We dare not exert our power in its full latitude. We are obliged to go fair and softly, and in practice, you know, we are the subjects. We have only the name of masters, and rather than give up this, which would completely subject us to the despotism of the petticoat, I hope General Washington, and all our brave heroes would fight...A fine story indeed. I begin to think the ministry as deep as they are wicked. After stirring up Tories, land-jobbers, trimmers, bigots, Canadians, Indians, Negroes, Hanoverians, Hessians, Russians, Irish Roman Catholics, Scotch,... at last they have stimulated the (women) to demand new privileges and (to) threaten to rebel.

1. Do you think John Adams takes his wife's concerns seriously?

2. Who does he think holds the real power? How do his views compare with current attitudes about the power of men and women?

3. Why would a period of revolutionary activity encourage many different groups to demand rights and privileges?

Abigail Adams to John Adams

May 7, 1776

I cannot say that I think you very generous to the ladies. For, whilst you are proclaiming peace and good will to men, emancipating all nations, you insist upon retaining an absolute power over wives. But you must remember that arbitrary power is like most other things which are very hard - very liable to be broken; and, notwithstanding all your wise laws and maxims, we have it in our power not only to free ourselves but to subdue our masters, and without violence throw both your natural and legal authority at our feet...

By 1848, more and more women were concerned with gaining equal rights with men. Elizabeth Cady Stanton, a supporter of women's rights, attended the first Women's Rights Convention in New York in 1848. She delivered a speech in which she said:

> "The history of mankind is a history of repeated injuries and usurpations on the part of men toward women, having as direct object the establishment of tyranny over her."

Compare Stanton's views with those written by Abigail Adams 75 years earlier.

5. COLONIAL OPINION ON THE EVE OF THE REVOLUTION

Introduction:

This scripted role play and group activity assists students in understanding the differing views of colonists on the eve of the American Revolution. It can be used during a study of the economic and political factors that led to the Revolution.

Objectives:

1. To increase understanding of the differing opinions held by colonists toward armed rebellion preceding the American Revolution.

2. To reinforce knowledge of some of the political causes of the American Revolution.

3. To increase understanding of the different types of governmental organization.

4. To develop understanding of a political spectrum, with emphasis on the meaning of "radical," "liberal," "moderate," "conservative," and "reactionary."

5. To encourage examination of values about government organization.

Level: Grade 8 and above

Time: One to two class periods

Materials: Copies of Handouts 5-1 through 5-3 for all students

Procedure:

1. Distribute Handout 5-1 to the class. Draw the spectrum on the board. Ask the students what these terms mean: "radical," "moderate," "conservative," "reactionary." Have them place the terms on the spectrum. The following may help you in clarifying the terms:

Term	How Much Change	What Direction	How Fast	What Methods
Radical	Complete	Looks toward future	Immediately	Peaceful or violent
Liberal	Substantial	Looks toward future	Fast, soon	Peaceful

Adapted from "Independence and the Revolutionary Period," in The Law and American History (Chicago: Law in American Society Foundation, 1969), pp. 23-26. Used with permission.

Term	How Much Change	What Direction	How Fast	What Methods
Moderate	Some	Looks toward future	Gradually	Peaceful
Conservative	Little	Wants to preserve the best of today	Very slowly if at all	Peaceful
Reactionary	Change back	Looks back to past	Immediately	Peaceful or violent

2. Distribute Handout 5-2 to the class. Select three students to play the roles of Samuel Seabury, Thomas Paine, and John Dickinson, or divide the class into groups of three and have students in each group take the roles of the three colonists.

3. Conduct the scripted role play. If three students are performing in front of the class, stop the role play at various points to ask questions about the views of each colonist. In either alternative, have the students look for key words, phrases, or sentences that indicate where they would place each character on the political spectrum.

4. After the reading, pass out Handout 5-3. Divide the class into groups of three to five. Have groups complete the first column of the handout by decidine whose view each item reflects. Instruct students to put the initials of the appropriate colonists in the boxes.

5. Then have students complete the second column by indicating whether they agree (A) or disagree (D) with the views expressed in each item.

6. Debrief with the following questions:

--Which two men had the greatest differences between them? What was the nature of their conflict?

--Compare your views with those of the three colonists.

--Ask a number of students whose view they would have supported during the Revolution and have them give their reasons. As an alternative, have students write a short paragraph starting with the sentence, "I would have supported the views of ________________ before the Revolution because...." Take a class vote on whether they supported Seabury, Dickinson, or Paine.

--Do these conflicts of attitudes still exist today?

--When would you justify the use of violence or revolution to handle conflict? Does your justification "allow" the American Revolution?

Handout 5-1 1 of 1

POLITICAL SPECTRUM

1. What is a spectrum?

   A spectrum is a broad sequence or range of related ideas or qualities. For example, going from black to white on a spectrum, one would see the whole range from the darkest grays to the lightest as one approached white. In a political spectrum, one sees the whole range of political attitudes, from the most extreme liberal to the most extreme conservative view. In your own words, what is a political spectrum? ____

   ____

   ____

2. What do the following terms mean?

   Radical ____

   Liberal ____

   Moderate ____

   Conservative ____

   Reactionary ____

3. Place these terms on your political spectrum.

________________________________|________________________________

COLONIAL OPINION ON THE EVE OF THE REVOLUTION

Today many Americans may be surprised to learn that in 1776 most colonists were not in favor of an armed rebellion against England. It has been estimated that no more than one-third of the colonists supported such a drastic step. Rebellion involves great risks. Many colonists were afraid that a revolt against England would lead only to disaster.

Here is a discussion between three colonial spokesmen: Samuel Seabury, an Anglican (Church of England) minister from New York; John Dickinson, a Pennsylvania lawyer; and Thomas Paine, a political writer recently arrived from England. While the following discussion did not actually take place, the words of the three men are based on their writings. As you read, decide which label--radical, moderate, conservative, reactionary, or liberal--best fits the views of each man.

SEABURY: The recent move to stop trade between the colonies and Britain will harm us, not our mother country. If we refuse to accept British goods at our ports, British merchants will soon find new markets. England's ships command respect throughout the globe. Her goods are superior to most in the world. Surely what we do not buy will eagerly be bought elsewhere. It is we who will suffer from this boycott. We have no trade but that which we have under the protection of England.

PAINE: Mr. Seabury, for a man of reason, you speak surprising nonsense. The colonists never have and never will benefit from any connection with England. You speak of trade. Are not our chances for favorable trade increased when we have many countries to trade with instead of one? England holds us so close to her, not from love, but in order to choke us.

SEABURY: I agree, sir, that our connection benefits Britain, but I insist that it benefits us as well. Consider the single problem of clothing ourselves with our own goods. We cannot make clothes as cheaply as we can buy them from Britain. We want woolens for the winter. If we do not continue to import wool from Britain, the first winter after our English woolens are gone, we shall all be freezing with cold. Not in 20 years, not in 50, will we have enough wool to clothe the inhabitants of this continent. We depend on exports to live. With her powerful Navy, England can prevent us from trading with all those nations you spoke of, Mr. Paine. A great number of people would be out of employ. We'd have thieves, mobs--and plenty of leisure to repent our folly.

DICKINSON: Mr. Seabury, may I ask your opinion of Britain's right to make laws for her American colonies?

SEABURY: Let me say quite simply that legislation is not a basic right in the colonies. The Roman colonies, for example, had no law-making powers at all. As colonists, we are entitled only to those law-making powers that the parent government chooses to give us. The idea that we are bound by no laws except those to which our representatives have consented is ridiculous. This idea is totally unsupported by any facts whatsoever. If followed, it would destroy the British government. We are part of the British Empire and should obey the laws of that empire.

DICKINSON: I am of the opinion that England has the right to control colonial trade but not to tax the colonists. Do you feel that England's right to make laws for her colonies includes tax laws?

SEABURY: Yes, indeed. No government can exist if it can pass laws but not raise money to make them work. If Parliament is going to pass laws for our protection on the frontier, then it is only right that we be taxed to pay for that protection.

PAINE: Seabury! Don't you see that England acts with only one object in mind--*what good it will do for England!* Nothing else. She passes laws, not for our good, but for hers. She defends us, not for our good, but for hers. She would defend any nation in the world if it were in her interest to do so. And she defended us from *her* enemies not ours--from those who had no quarrel with us but were enemies of England. I challenge anybody to show a single advantage that this continent can reap by being connected with England. The disadvantages are without number. Our connection with England involves us in European quarrels and wars when we might be at peace and engage in profitable trade with all of Europe.

DICKINSON: Mr. Paine, I fear the next step which such logic must take. I would caution . . .

PAINE: Caution, Mr. Dickinson, is a luxury enjoyed by men blind to justice. Everything that is right or natural pleads for separation. The blood of the dead, the weeping voices of nature cry, 'tis time to part.'

DICKINSON:	I would caution--and I say this from the very depth of my being--I would caution against any such move. Every government, at some time or other, makes mistakes. It is then the duty of the governed to try to correct these mistakes. Mr. Paine, you would have us use a club before we have used discussion. I feel that such a course is premature. Let us behave like dutiful children, who have received unjust blows from a beloved parent. Let us complain to our parent, but with words, not guns. The British are a generous, sensible, and humane people. They may make mistakes, but I cannot yet believe they will be cruel or unjust.
SEABURY:	Let me add a very practical consideration to Mr. Dickinson's advice. England is not an old, wrinkled, worn-out hag. She is strong. As yet we have experienced only the back of her hand. What chance would we have against her full fleet and troops? God forbid!
PAINE:	God, Mr. Seabury, forbids injustice. You speak of harmony and peace. Can you restore to us the time that is past? A government of our own is a natural right. It is better to form a new one now, when we have the power, than to wait until we may have such a chance again. Every spot in the Old World is overrun with oppression. Let us make America a place of freedom for all mankind!
DICKINSON:	The cause of liberty is a cause of too much dignity to be won by cannon and bayonet. One does not shape a diamond with a blacksmith's hammer. Let us first try to have our wrongs set right by just and peaceful means--by boycotting British goods, for example--before we take a step so extreme as to go and fight our mother country.
SEABURY:	And Mr. Paine, do you think that, once independent, the colonies would then unite? The probable result would, in fact, be eternal bloodshed among themselves over boundaries and trade.

ATTITUDES TOWARD GOVERNMENT

	Which colonist would agree?	Do you agree or disagree?
1. It would be wrong to change the system of government we have inherited. It has the benefits of long experience.		
2. A leader is not fully responsible to the people, but only to God, from whom he receives authority.		
3. Fair decisions can be made only by impartial leaders who have no special interest whatsoever at stake. Only these people should be allowed to govern.		
4. Leaders should not bow to the prejudiced interests of the people, but should be guided by a sense of law. Legal rights and the general welfare should be their only guidelines.		
5. Each person should have a say in determining his/her own fate. Thus, the government should be run by representatives chosen by a majority of the people.		
6. A country belongs to those people who own property in it, and they should govern.		
7. Power should be separated and divided among several ruling groups. Centralized power often brings tragic mistakes.		
8. The power to govern should be given to the most capable people, to those who have demonstrated intelligence and skill. The average person does not have enough skill to govern.		
9. Life is naturally a struggle. Those strong enough to seize power earn the right to govern.		
10. Time, money, and effort are saved when a small, unified group runs the government. It is inefficient and wasteful to split power among groups who will bicker and delay decisions.		

6. THE DECLARATION OF INDEPENDENCE

Introduction:

This activity is designed to assist students in interpreting the Declaration of Independence, a document that is often relegated to the index of history texts and never read by students. Students, playing the roles of delegates to the Continental Congress, discuss and explain the meaning of the Declaration of Independence. This activity can be used during a study of the events leading to the Declaration of Independence.

Objectives:

1. To develop understanding of the conditions that led to the Declaration of Independence.

2. To develop understanding of the role of government and the rights of citizens.

Level: Grade 8 and above

Time: One and one-half to two class periods

Materials: Copies of Handout 6-2 for all students

Procedure:

1. Distribute the entire handout, which outlines the Declaration of Independence, to all students.

2. Explain that students are to take the roles of delegates to the Continental Congress that is meeting on July 4, 1776 to review and discuss the Declaration of Independence. Explain that Thomas Jefferson and others have prepared this outline expressing the belief of the colonists, listing the wrongs done by the King of England, and explaining the decision to form a new government.

3. Divide the class into three groups and assign one part of the handout to each group.

4. Explain that each group is responsible for reviewing and discussing among themselves the meaning of the part they are assigned. Have the groups discuss the questions provided. Depending on the time available, as much as one class period can be devoted to this portion of the activity.

5. Then have each group make a ten-minute presentation to the rest of the class on the meaning of their part of the Declaration.

6. If all groups agree with the principles of the Declaration, they can ratify the document.

THE DECLARATION OF INDEPENDENCE

PART I - STATEMENT OF WHAT COLONISTS BELIEVED:

A. Beliefs About Men's Rights:

1. All men are created equal.

2. God has given all men some basic rights, and these cannot be taken from them.

3. Some of these rights are the rights to life, to liberty, and to the pursuit of happiness.

B. Beliefs About Government:

1. The job of the people who run the government is to protect the rights of the people.

2. The powers held by the people who run the government have been given to them by the people they represent.

C. Beliefs About Changing the Government:

1. When the people who run the government begin to take away the rights of the people, the people may: (a) change their government, or (b) get rid of the old kind of government and set up a new kind based on the ideas they think will be best for the safety and happiness of the people.

2. Government should not be changed for small or unimportant reasons.

3. The people will put up with very bad conditions if they can, rather than change the kind of government that they are used to.

4. When rights are taken from the people for a long time, and when there is a danger that the people who govern the country are trying to take all the power, then the people have the right to: (a) throw out these rulers, and (b) make new laws and a new government.

What do you think?

1. What is meant by the right to liberty? What is meant by the right to the pursuit of happiness?

2. Where did the colonial leaders believe that the men who ran the government got their power? Is this true today? Why?

From Law in a New Land (Boston: Houghton Mifflin Co., 1972). Used with permission.

3. With which of the beliefs in Part I of the Declaration do you agree? With which do you disagree? Why?

PART II - CHIEF WRONGS DONE TO THE COLONISTS BY THE KING:

A. The king did not let the colonists make all the laws they needed for their own good.

B. When colonial assemblies voted in a way the king did not like, he did away with them.

C. The king got the judges to decide cases as he wanted.

D. The king kept armies in the colonies even when there was no war.

E. The king would not let colonists trade with other countries.

F. The king taxed the colonists without letting them vote in Parliament on the taxes.

G. Many times a person was not allowed the right to a trial by jury.

What do you think?

1. What is a tax? Why did the colonists complain about being taxed? Was this a fair complaint? Why?

2. Which wrongs listed by the colonists do you think are the worst? Do you think people in England felt the same way as the colonists about the king's actions? Why?

3. If a ruler did all those things today, would he be the fit ruler of a free people? Why?

PART III - DECISION OF THE COLONISTS TO FORM A NEW GOVERNMENT:

The words in the outline below are very much like the words in the real Declaration. But they have been changed a bit to make them easier to understand.

A. We, the representatives of the United States of America, by the power given to us by the people in these colonies, say that these united colonies are, and have the right to be, free and independent states.

B. We say that these states are no longer under the rule of England and its king.

C. We say that because we are free states, we have the power to make war, to make peace, to make agreements with other countries, to trade with other countries, and to do all of the other things that a free country can do.

D. With God's protection, we all pledge to support this Declaration with our lives, our fortunes, and our sacred honor.

What do you think?

1. Where did the colonial leaders say they got their power to make this Declaration?

2. In your own words, what do you think "Declaration of Independence" means? What line or lines in Part III show that this is a "Declaration of Independence"?

3. What powers were the new states to have as a free country?

SECTION II

GROWTH OF A NEW NATION

7. THE CONSTITUTIONAL CONVENTION OF 1787: A SIMULATION

Introduction:

This simulation of the Constitutional Convention introduces students to the Constitution through the personalities involved in the creation of the document, making it more relevant and meaningful to students. Students will need some prior knowledge of the basic issues facing the convention in order to participate effectively in the simulation. Following this activity, the teacher may choose to either study the Constitution in depth or supplement the activity with textbook materials. It should be noted that while all the Constitutional material is accurate, liberties have been taken in writing the roles for the delegates. This has been done in an attempt to fairly distribute the roles. Whenever possible, actual viewpoints held by the delegates have been incorporated. Roles may be combined if classes are too small to cover all 40 roles.

Objectives:

1. To develop an understanding of the legislative, executive, and judicial branches of the federal government.

2. To increase awareness of the historical context and personalities involved in the creation of the Constitution.

3. To enhance listening, speaking, and group process skills.

Level: Advanced grade 8 and above

Time: Two to three class periods

Materials: Charts A through C on transparencies or enlarged on posting paper; copies of Handouts 7-1 and 7-2 for all students; one copy of Handout 7-3 cut into individual role cards; construction paper signs for each state delegation (students can help prepare the charts and signs if the teacher wishes).

Procedure:

1. Explain to students that they will be enacting the Constitutional Convention of 1787 by taking the roles of the Constitution's framers. Distribute copies of Handouts 7-1 and 7-2 to all the students, and explain the procedures that will be used. Allow time for students to read the handouts and ask questions.

2. Assign roles to the students, giving each student the appropriate role card(s) from Handout 7-3. As homework or in class, have students prepare their presentations for the convention. Ask students not to read directly from their role cards when they are called on to speak.

Activity developed by Martha Winters, Albuquerque High School, Albuquerque, New Mexico.

Point out that many of the delegates will be presenting recommendations from committees appointed to work on particular topics or problems.

3. Arrange the room for the convention. Place a table in front of the room for the president of the convention and arrange the state delegations in a large semicircle around the room.

4. Conduct the convention according to the procedures on Handout 7-2.

5. Debrief using the following suggested questions and referring to the charts when appropriate:

--Did the simulation help you to understand the three branches of government?

--What were the disadvantages of the Articles of Confederation?

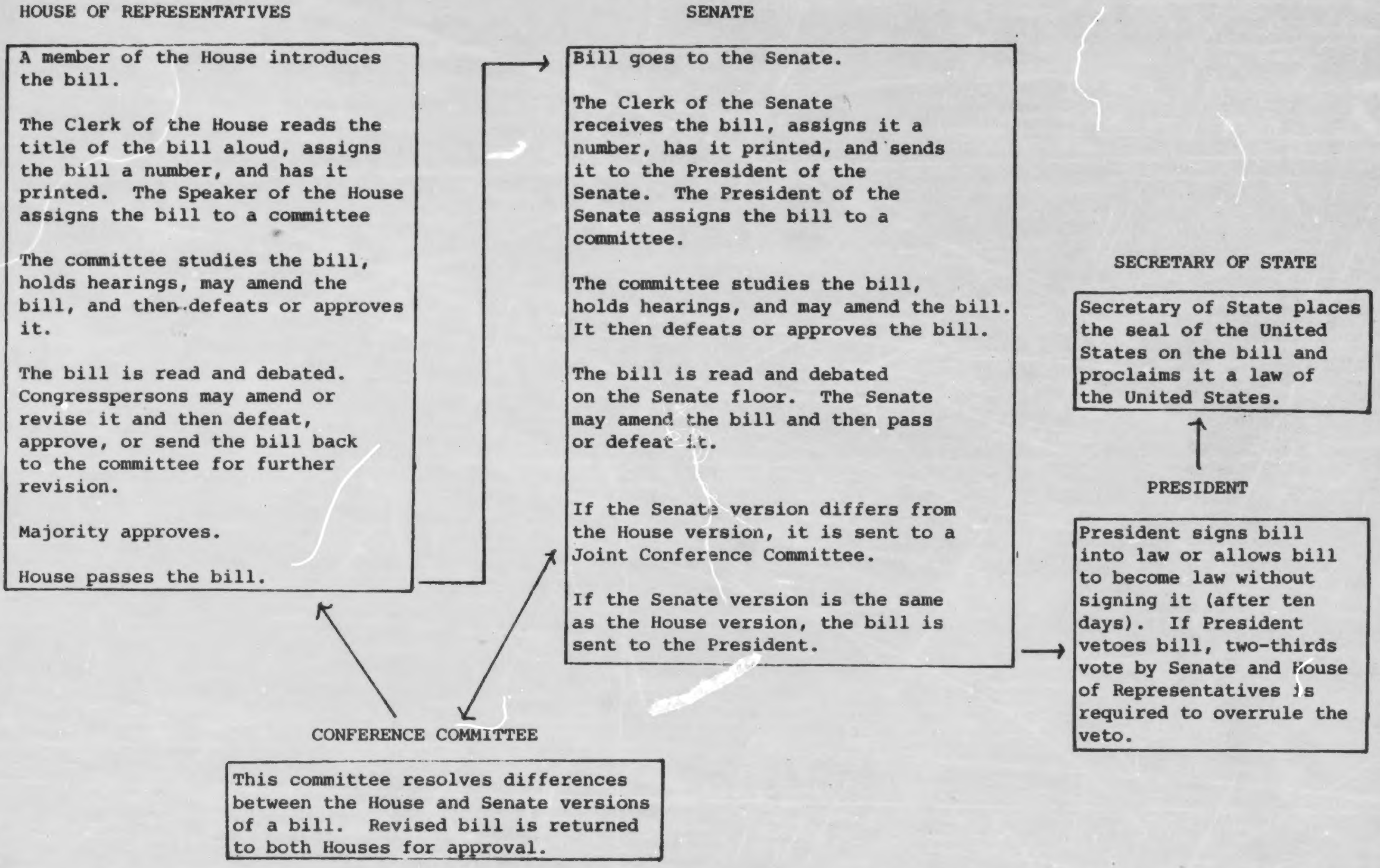
--Do you agree or disagree with Alexander Hamilton's ideas about who should represent the people and the length of terms of office?

--How do James Wilson's views differ from Alexander Hamilton's?

--Why did many of the delegates believe there was a need for two legislative bodies?

--Evaluate the design for the government that the convention created. Can you think of other ways of organizing government that would be more effective?

CHART A--HOW A BILL BECOMES A LAW
(For a Bill Originating in the House)



HOUSE OF REPRESENTATIVES

A member of the House introduces the bill.

The Clerk of the House reads the title of the bill aloud, assigns the bill a number, and has it printed. The Speaker of the House assigns the bill to a committee

The committee studies the bill, holds hearings, may amend the bill, and then defeats or approves it.

The bill is read and debated. Congresspersons may amend or revise it and then defeat, approve, or send the bill back to the committee for further revision.

Majority approves.

House passes the bill.

SENATE

Bill goes to the Senate.

The Clerk of the Senate receives the bill, assigns it a number, has it printed, and sends it to the President of the Senate. The President of the Senate assigns the bill to a committee.

The committee studies the bill, holds hearings, and may amend the bill. It then defeats or approves the bill.

The bill is read and debated on the Senate floor. The Senate may amend the bill and then pass or defeat it.

If the Senate version differs from the House version, it is sent to a Joint Conference Committee.

If the Senate version is the same as the House version, the bill is sent to the President.

CONFERENCE COMMITTEE

This committee resolves differences between the House and Senate versions of a bill. Revised bill is returned to both Houses for approval.

PRESIDENT

President signs bill into law or allows bill to become law without signing it (after ten days). If President vetoes bill, two-thirds vote by Senate and House of Representatives is required to overrule the veto.

SECRETARY OF STATE

Secretary of State places the seal of the United States on the bill and proclaims it a law of the United States.

Chart B: Division of Powers

Powers Delegated to the FEDERAL GOVERNMENT:

1. To regulate foreign and interstate commerce.
2. To coin money and regulate its value.
3. To punish counterfeiters.
4. To wage war.

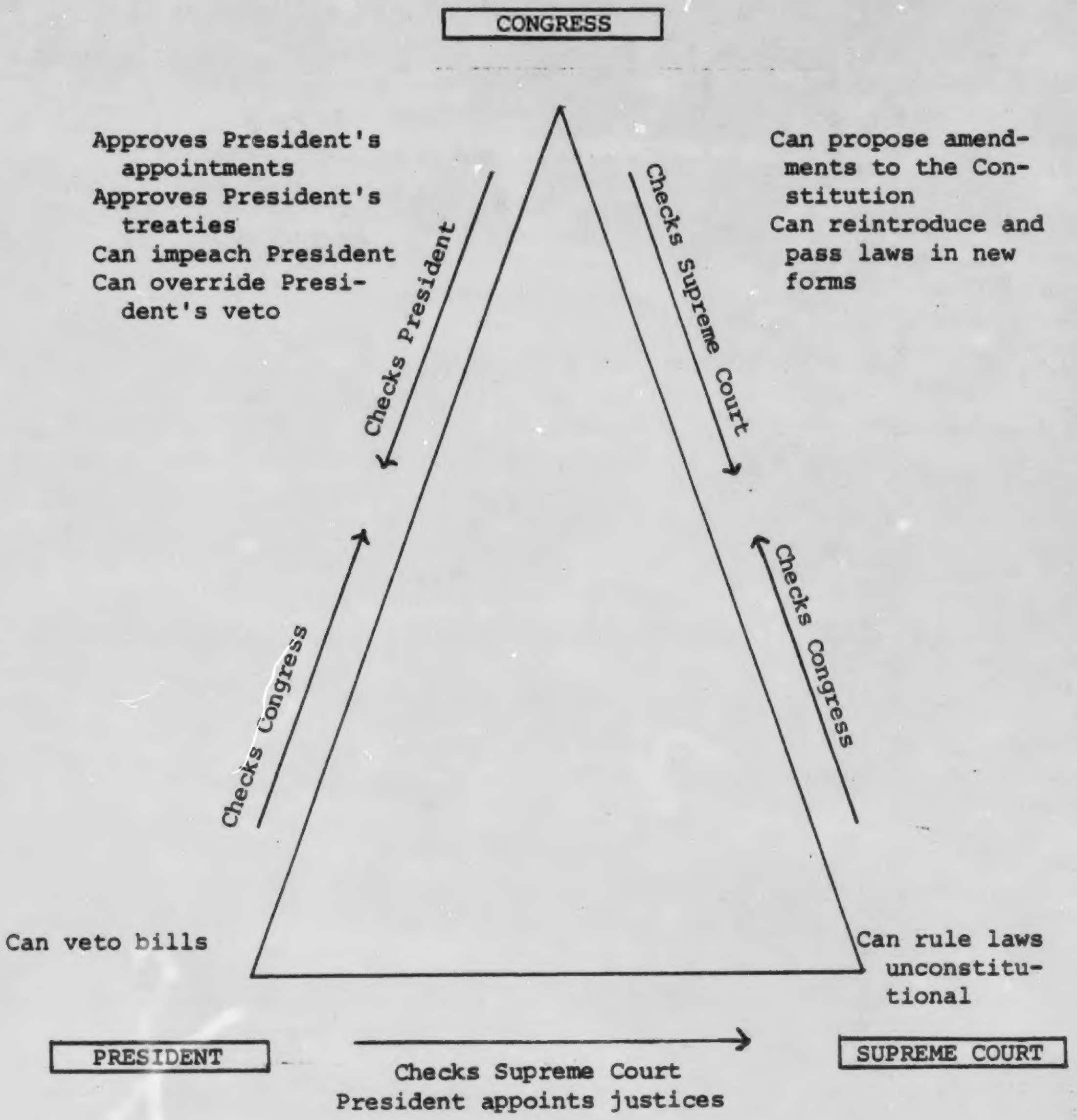
CONCURRENT POWERS (Both Federal and State Governments):

1. To tax.
2. To raise and support armed forces.
3. To punish violators of their laws.

Powers Reserved to the STATES:

1. To set up local governments.
2. To keep official records.
3. To exercise police powers.
4. To control education and elections.

Chart C: System of Checks and Balances


CONGRESS
Approves President's appointments
Approves President's treaties
Can impeach President
Can override President's veto
Checks President
Checks Supreme Court
Can propose amendments to the Constitution
Can reintroduce and pass laws in new forms
Checks Congress
Checks Congress
Can veto bills
Can rule laws unconstitutional
PRESIDENT
SUPREME COURT
Checks Supreme Court
President appoints justices

CONSTITUTIONAL CONVENTION DELEGATES

George Washington - President of the Convention

Connecticut
- William Samuel Johnson
- Roger Sherman

Delaware
- George Read
- Gunning Bedford
- John Dickinson
- Richard Bassett
- Jacob Broom

Georgia
- William Few
- Abraham Baldwin

Maryland
- James McHenry
- Daniel of St. Thomas Jenifer
- Daniel Carroll

Massachusetts
- Nathaniel Gorman
- Rufus King

New Hampshire
- John Langdon
- Nicholas Gilman

New Jersey
- William Livingston
- David Brearly
- William Paterson
- Jonathan Dayton

New York
- Alexander Hamilton

North Carolina
- William Blount
- Richard Dobbs Spaight
- Hugh Williamson

Pennsylvania
- Benjamin Franklin
- Thomas Mifflin
- Robert Morris
- George Clymer
- Thomas FitzSimmons
- Jared Ingersoll
- James Wilson
- Gouverneur Morris

South Carolina
- John Rutledge
- Charles Cotesworth Pinckney
- Charles Pinckney
- Pierce Butler

Virginia
- John Blair
- James Madison
- Edmund Randolph

CONSTITUTIONAL CONVENTION PROCEDURE

1. Opening statement by GEORGE WASHINGTON. Following the statement, he calls on JOHN DICKINSON, delegate from Delaware.

2. JOHN DICKINSON summarizes the Articles of Confederation and gives the reasons for calling the convention.

3. GEORGE WASHINGTON asks for plans for organizing the new government. EDMUND RANDOLPH, delegate from Virginia, asks to be recognized.

4. EDMUND RANDOLPH presents the Virginia Plan. The following delegates offer their opinions on the plan:
--ALEXANDER HAMILTON, New York
--GOUVERNEUR MORRIS, Pennsylvania
--BENJAMIN FRANKLIN, Pennsylvania

5. Washington closes the debate and calls for a vote: Should the United States have three branches of government--legislative, executive, and judicial? (The question should pass.)

6. Washington thanks the delegates and asks for opinions on the legislative branch. The following delegates speak:
--BENJAMIN FRANKLIN, Pennsylvania
--WILLIAM PATERSON, New Jersey
--ALEXANDER HAMILTON, New York
--JAMES WILSON, Pennsylvania
--ROGER SHERMAN, Connecticut

7. Washington closes the discussion and calls for a vote: Should the United States have a legislature composed of two houses, one whose members are selected on the basis of population, the other with an equal number of members from each state? (The question should pass.)

8. Washington thanks the delegates and asks for additional views regarding the legislative branch's composition and functions. The following delegates speak:
--NATHANIEL GORMAN, Massachusetts
--WILLIAM LIVINGSTON, New Jersey
--WILLIAM FEW, Georgia
--DANIEL OF ST. THOMAS JENIFER, Maryland
--JOHN RUTLEDGE, South Carolina
--THOMAS FITZSIMONS, Pennsylvania
--HUGH WILLIAMSON, North Carolina
--WILLIAM BLOUNT, North Carolina
--WILLIAM SAMUEL JOHNSON, Connecticut
--GEORGE READ, Delaware
--JOHN LANGDON, New Hampshire
--NICHOLAS GILMAN, New Hampshire

9. Washington closes the discussion and asks delegates to vote on the details regarding the legislative branch. Washington then asks for views on the executive branch. The following delegates speak:

--RUFUS KING, Massachusetts
--THOMAS MIFFLIN, Pennsylvania
--CHARLES COTESWORTH PINCKNEY, South Carolina
--CHARLES PINCKNEY, South Carolina
--JOHN BLAIR, Virginia

10. Washington closes the discussion and calls for a vote on the recommendations presented. Washington then asks for views and opinions on the judicial branch. The following delegates speak:
--JACOB BROOM, Delaware
--RICHARD BASSETT, Delaware
--GUNNING BEDFORD, Delaware
--ABRAHAM BALDWIN, Georgia

11. Washington closes the discussion and calls for a vote on the recommendations presented. Washington then asks for special input on relations among the states from the following delegates:
--JAMES MCHENRY, Maryland
--DANIEL CARROLL, Maryland
--RICHARD DOBBS SPAIGHT, North Carolina
--JONATHAN DAYTON, New Jersey
--DAVID BREARLY, New Jersey
--GEORGE CLYMER, Pennsylvania

12. Washington closes the discussion and calls for a vote on the recommendations presented. Washington then asks if any particular concerns remain among the delegates. The following delegates respond:
--ROBERT MORRIS, Pennsylvania
--JARED INGERSOLL, Pennsylvania
--PIERCE BUTLER, South Carolina
--JAMES MADISON, Virginia

13. Washington closes the discussion and calls for a vote on the recommendations presented.

14. Washington then tells the secretary of the convention to hand over the Constitution as dictated by the delegates. All will come forward to sign the document except Edmund Randolph, who disagrees on several points and refuses to support the Constitution.

15. Washington makes the closing statement.

ROLES

GEORGE WASHINGTON

As President of the Constitutional Convention, Washington makes the opening and closing statements. He also conducts the proceedings.

Opening Statement

I would like to welcome all of you to the Constitutional Convention. We are faced with an awesome task during the weeks ahead. As I look over the delegates representing twelve states, I am impressed with the caliber of men here in Philadelphia. Many of you are college graduates. We have several former and current members of college faculties. Many are schooled in history and philosophy. They are here to offer expertise based on these studies. Others at this convention are lawyers. We are disappointed that several learned men could not attend. Thomas Jefferson and John Adams are overseas. Patrick Henry was invited, but he declined to attend. He is happy with our government under the Articles of Confederation. But we in attendance know that the document is not working satisfactorily. We have a few rules for the convention that we shall follow for the next few weeks. Each state will be granted only one vote. Since our real mission is to start at the beginning and rewrite the Articles, I'm sure that we will be voting on many matters. So one vote per state will keep all matters equal. Also, we must keep these proceedings secret. No one will know what transpires until the outcome of our convention is published. Let us try to work as effectively as possible in this heat and humidity and develop a document that will meet our obligations to the people.

I'd like to call on the delegate from Delaware to brief us on the contents of the Articles of Confederation. When the weaknesses are revealed, everyone should have an idea of the work that awaits us.

Closing Statement

When we convened this convention four months ago, we did not realize the awesome task that was before us. We should all feel proud for the work, debate, and compromises that have led to this Constitution of the United States. I am certain that everyone knows an even greater task is ahead. We must all return to our home states and convince the people that this is a document that will best serve them. When nine states have ratified the Constitution, then it will become the law of the land. Judging from the heated debates during the convention, the ratification will not come easily. But I am certain that this convention could not have done a better job. I agree with my friend, Benjamin Franklin, when he said that "we have consented to this convention because we expect no better, and because we are not sure that it is not the best..."

JOHN DICKINSON (Delaware)

Dickinson was the primary author of the Articles of Confederation, the document that was used after the American Revolution to loosely bind the states. According to the Articles, there was to be only a Congress. The Congress had the power to have an army and navy, declare war, deal with the Indians, start a mail service, borrow money, and ask the states for money to run the government. But without the power to tax the people for money, the government had no power to settle arguments between states. It also could not control trade among the states. Some merchants in states were imposing tariffs, or taxes, on goods from other states in order to insure their profits. The convention was called to work on a new system to solve these problems.

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EDMUND RANDOLPH (Virginia)

When George Washington requests suggestions for governmental organization, Randolph submits his plan. Called the Virginia Plan, it is an outline of three branches of government. The branches are executive, legislative, and judicial. Each branch would have enough power to govern sufficiently. He believes that the legislative branch should be based on representation according to the population of the state. This plan favors the large states. Randolph was the governor of Virginia. Since Virginia was a large state during this time period, he was looking out for his best interests. Ultimately, he declined to sign the Constitution because he disagreed with parts of it.

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ALEXANDER HAMILTON (New York)

Hamilton strongly supports the plan suggested by Edmund Randolph. He believes that the most important part of the plan is the executive branch of the government. The chief executive should be elected for life. He also believes that the Senate members should be appointed for life. According to Hamilton, the legislative branch should represent the wealthy and educated members of the United States. He feels that these are the people who are best able to run the country.

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GOUVERNEUR MORRIS (Pennsylvania)

Morris agrees with Hamilton's ideas. He also believes that the wealthy should run the country. He further believes that the thirteen original states should be superior to any states who might want to join the United States later. The new states should not have as much representation in the legislative branch as the original thirteen.

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BENJAMIN FRANKLIN (Pennsylvania)

At 81, Franklin is the oldest delegate at the convention. When he speaks, everyone shows reverence for his opinion. He asserts that there is no need for an executive branch of the government. All that is needed is a one-house legislature. He does not believe that there should be any need for one branch to check on another branch. Therefore, he does not believe that there should be a checks-and-balance system worked into the government.

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WILLIAM PATTERSON (New Jersey)

Following the vote on the three branches of government, Patterson offers a suggestion. This is called the "small state" plan because it favors the smaller states in the United States. He would like to have equal representation in the legislative branch of the government for all the states. This would mean that all states--no matter how many people lived there--would have the same amount of power in the Congress.

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JAMES WILSON (Pennsylvania)

Wilson opposes Alexander Hamilton's plan of a Senate composed of only the wealthy and educated. He believes that all men should be able to vote. He is especially concerned about the men settling the frontier and feels that their voice should be heard. They are the future growth for the young country, and they must have input into the government. Any states that are joining the United States will probably come from this area. Men must feel confident that their voice will be heard.

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ROGER SHERMAN (Connecticut)

He offers a solution, or compromise, between the "large state" and "small state" plans. It is called the Connecticut Compromise. In this plan, the legislative branch will consist of two separate houses. The Senate will have an equal number of members from every state. The other house, the House of Representatives, will be based on the population of the states. This plan is enthusiastically received by the delegates.

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NATHANIEL GORMAN (Massachusetts)

Gorman gives details about the House of Representatives. Members of the House will serve two-year terms. A representative must be over the age of twenty-five, a U.S. citizen for at least seven years, and a resident of the state from which he or she is elected. The number of members in the House of Representatives will be determined according to the number of "free persons" in each state plus "three-fifths of all other persons." This means that states can count only three-fifths of their Black slaves. Since representation is based on population, the Constitution provides for a national head count, or census, every ten years. If a member of the House dies or resigns, the governor of the state orders a special election to fill the vacant seat.

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WILLIAM LIVINGSTON (New Jersey)

As a northerner from New Jersey, Livingston gives the North's viewpoint on the question of representation of slaves in the government. Since the government would operate on funds from the states, the North feels that slaves should count in determining the share of federal taxes paid by the state. However, slaves should not be counted in determining the number of representatives in the House. As a rather pompous person who believes that his opinion is the only correct opinion, he is overbearing in manner when presenting his viewpoint.

* * *

WILLIAM FEW (Georgia)

Few is a soft-spoken man from Georgia. He is a welcome relief to the convention after listening to Mr. Livingston. He states that the South feels that slaves should be counted in determining the representation from the state. They should not count when determining the share of federal taxes that the state will pay. He has all of the southern states solidly behind him in this matter.

* * *

DANIEL OF ST. THOMAS JENIFER (Maryland)

He reiterates the Three-Fifths Compromise that has already been introduced by Mr. Gorman. By counting each slave as three-fifths of a person, a southern state will use that formula to determine taxes to be paid to the federal government and the representation in Congress. Everyone is much relieved over this solution.

* * *

JOHN RUTLEDGE (South Carolina)

Rutledge gives details about the Senate. Each state will have two senators to be elected to six-year terms. The state governor will call a special election if a senator dies or resigns. The Vice-President of the United States will serve as the President of the Senate. While the House of Representatives can impeach, or accuse, officers of the executive branch or federal judges, the Senate will try the impeachments.

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THOMAS FITZSIMONS (Pennsylvania)

FitzSimons presents general information about how the houses of Congress will operate. In order for both houses to operate effectively, a quorum, or majority of the members must be present. Each house will determine its own rules for the proceedings. Each house will keep and publish a journal of its proceedings. This way the voters will always be informed of the activities of Congress. Mr FitzSimons mentions that this is a radically new idea. Nowhere else in the world is this type of openness in government being practiced.

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HUGH WILLIAMSON (North Carolina)

Williamson suggests that the Senators and Representatives be paid out of the Treasury of the United States. He also mentions an important concern to the delegates. All members of the house will be able to speak freely in speeches and debates if they are given immunity from prosecution. They will not have to worry about being arrested for anything that they might say in Congress. In order to keep the government as bribery-free as possible, no member of Congress will be allowed to hold any other government office. Williamson reminds the convention that the king and his ministers in Britain used to control Parliament by promising offices as bribes. This rule will eliminate that practice.

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WILLIAM BLOUNT (North Carolina)

As part of the compromise between the large states and the small states, it has been suggested that bills for raising money by taxes must be introduced in the House of Representatives. By using Chart A, "Steps for a Bill to Become a Law," Blount explains this procedure to the delegates.

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WILLIAM SAMUEL JOHNSON (Connecticut)

Johnson explains some of the powers delegated to Congress. He might choose to display this in some manner for the delegates to see. Congress has the power to levy taxes to pay the nation's debts, to provide for national defense, and to provide for the general welfare of the people. Congress will be able to borrow money for the United States. Congress will regulate commerce, or trade, with foreign nations and among the several states. Congress will decide how immigrants will become citizens. Congress will coin money and print paper money. Congress can make laws to punish counterfeiting. Congress will establish a post office. Congress will also grant patents to promote the progress of science and useful arts and protect the inventors and authors.

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GEORGE READ (Delaware)

Read continues where Mr. Johnson leaves off. All federal courts except the Supreme Court will be established by Congress. Congress will fix the punishment for piracy against American ships. Only Congress may declare war. All money for the army and navy will come from Congress. Congress will make the rules for the armed forces. If it becomes necessary, Congress can call on state militias to enforce federal laws and defend life and property. Congress has control over the District of Columbia and all other places owned and operated by the federal government. Mr. Read would like the delegation to pay particular attention to this last power. As the United States changes and grows, they must be sure that Congress will be able to meet the needs of a changing society. The last clause enables Congress to frame new laws that are related to specific powers already listed in the Constitution.

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JOHN LANGDON AND NICHOLAS GILMAN (New Hampshire)

Together, Langdon and Gilman explain Chart B, "Division of Powers." This will give the delegates an idea as to the powers held by the federal government, the powers held by the states, and those that are for both federal and state governments.

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RUFUS KING (Massachusetts)

After listening to Alexander Hamilton's views on the election process, King suggests this method for electing the President. Instead of being chosen directly by the people, an electoral college would be employed. The electors would be prominent individuals acquainted with leaders in other states. They would be able to make a wise choice for president. Each state would have as many electors as it has senators and representatives. (It should be noted that the Twelfth Amendment nullifies this part of the Constitution. Now electors are nominated by political parties and elected by the people. They must cast their votes for the candidates with the most popular votes from the people of the state.) The President and the Vice-President will hold their office for a term of four years.

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THOMAS MIFFLIN (Pennsylvania)

Mifflin gives the time decided upon to hold the elections for President: the people will vote on the first Tuesday following the first Monday in November. The electors will vote on the first Monday after the second Wednesday in December. To hold the office of President, a person must be a natural-born citizen, be thirty-five years of age, and have been a resident of the United States for fourteen years. If the presidency becomes vacant, then the Vice-President takes the office.

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CHARLES COTESWORTH PINCKNEY (South Carolina)

He has been working on the committee to write the oath of office. He will read it for the delegates--"I do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States." Also, the President will receive a salary for his services.

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CHARLES PINCKNEY (South Carolina)

Pinckney briefs the delegates on the powers of the President. The President will be the Commander-in-Chief of the Army and Navy of the United States. He may ask advisors for written opinions on matters related to their departments. This establishes the cabinet. The President will make treaties with foreign countries, but they must be approved by the Senate. The President will appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and any other government officials, but the Senate must approve the appointments. If any vacancies occur in appointive federal offices when the Senate is not in session, the President may make temporary appointments.

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JOHN BLAIR (Virginia)

Blair is concerned that Congress know the condition of the country, so he proposes that the President make a speech each year to both houses of Congress. This speech will be called the "State of the Union" message. If the need ever arises, he feels that the President should be able to call both houses of Congress for a special session. It is also possible for the President, Vice-President, and all civil officers of the United States to be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

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JACOB BROOM (Delaware)

Broom presents the composition of the Supreme Court. The Constitution will set up this court. Congress will determine the number of justices on the court. The President will appoint the federal judges, with the consent of the Senate. Federal judges hold office for life. He asserts that the judiciary branch is an extremely important part of a balanced system of government.

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RICHARD BASSETT (Delaware)

Bassett has been working on the development of the judiciary system. He tells the delegates that the Supreme Court will interpret the Constitution. The Supreme Court will have jurisdiction over cases involving foreign representatives and in cases involving disputes between states. Except for impeachment cases, anyone accused of a federal crime will have the right to a trial by jury. The trial must be held in the state where the crime was committed.

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GUNNING BEDFORD (Delaware)

Bedford presents Chart C, "System of Checks and Balances," to the delegates. This will make clear the system of checks and balances that will exist among the branches of the government.

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ABRAHAM BALDWIN (Georgia)

Baldwin gives the definition and the punishment of the crime of treason. In order for a person to be convicted of treason, there must be two witnesses to the act. This is so that no one will be tried for treason merely for criticizing the government. Congress has the power to fix the punishment for treason. The families and descendants of a person found guilty of treason cannot be punished for his or her crime.

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JAMES MCHENRY (Maryland)

McHenry is the first to speak on the relations among states. Each state must respect the laws, records, and court decisions of other states. If this were not the case, a person might move to another state to avoid legal punishment in the first state.

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DANIEL CARROLL (Maryland)

Carroll outlines the privileges of citizens. A person moving into another state has the same rights the state gives to its own citizens. The state may still require a person to meet its own residence requirements for voting and holding office. If a suspect flees to another state, the governor of the state where the crime was committed may request that he or she be returned. Sending escaped suspects back for trial or punishment is called extradition.

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RICHARD DOBBS SPAIGHT (North Carolina)

As a Southerner, Spaight lobbied hard for a clause to be added to the Constitution. It states that slave owners have the right to have their escaped slaves returned to them.

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JONATHAN DAYTON (New Jersey)

Dayton tells the delegates that the Constitution gives Congress the power to govern the western territories. It can admit new states into the Union, but old states cannot be subdivided into new states without the consent of the legislatures of the states concerned, as well as of the Congress.

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DAVID BREARLY (New Jersey)

Brearly explains that Congress may govern and make regulations for the territories and properties of the United States. Territories are lands not under the control of a state.

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GEORGE CLYMER (Pennsylvania)

Clymer describes this guarantee to every state: The United States will determine whether a state has a republican form of government. The Constitution will require the federal government to protect a state against invasion and, upon request of the proper state authorities, to protect it against rioting and violence.

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ROBERT MORRIS (Pennsylvania)

As an influential delegate from a large state, Morris makes a pertinent request of the delegates. It is entirely possible that future generations may need to make some changes in the Constitution. Change must be possible without being too easy. Congress can propose an amendment by a two-thirds vote of both houses. Or, if two-thirds of the state legislatures request it, Congress is to call a convention to propose an amendment. An amendment must be approved by three-fourths of the state legislatures or by conventions in three-fourths of the states.

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JARED INGERSOLL (Pennsylvania)

Ingersoll explains his concern about establishing the credit of the new government with other countries in the world. He asks that all debts and treaties made under the Articles of Confederation be recognized by the United States. This act is widely favored by the delegates, especially Alexander Hamilton. He also asks that the national government, rather than the states, be the supreme power. It is further important that all officials pledge by oath to support the Constitution. But in no case will a religious test ever be required as a qualification to any office or public trust under the United States.

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PIERCE BUTLER (South Carolina)

Butler gives the requirements for the ratification of the Constitution. A specially elected ratifying convention will be held in each state to approve the document. When nine states have approved it, the Constitution will be considered in effect.

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JAMES MADISON (Virginia)

Madison addresses problems that concern many delegates. They were afraid that the individual freedoms of the people were being ignored in this Constitution. He pledges to work on some amendments to the Constitution to guarantee the rights of the citizens. Some of the freedoms to be in these amendments are: freedom of religion, speech, press, assembly, bear arms, and petition. No one should be forced to house troops or be subjected to searches and seizures. The rights of accused persons must be protected as well as a right to a speedy and fair trial. A trial by jury in a civil suit in which the controversy exceeds $20 should be insured. Also excessive bail should not be required nor should cruel and unusual punishment be inflicted. The states, people, and the government must all recognize the powers that are alloted to each. He tells the delegates that as soon as he has a "Bill of Rights" drafted, they will be notified. Also, he has been keeping a diary of the convention proceedings. He promises not to publish the diary for many years to come.

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8. CLAIM YOUR POWERS

Introduction:

Students usually understand the idea of separation of powers but often have difficulty remembering the role of each branch of government. This exciting game will reinforce knowledge of the powers of each branch and at the same time make review of the first three articles of the Constitution enjoyable.

Objectives:

1. To reinforce the distinctions among the three branches of government.

2. To increase understanding of the powers of each branch of government as delineated in Articles I, II, and III of the Constitution.

3. To enhance reading, listening, and critical thinking skills.

Level: Grade 8 and above

Time: One class period

Materials: Three reversible signs with "CLAIM" and "DO NOT CLAIM" written on opposite sides; copies of U.S. Constitution for all students.

Procedure:

1. Provide each student with a copy of the U.S. Constitution.

2. Divide the class into three groups representing the executive, legislative, and judicial branches of government. Give each group a sign with "CLAIM" and "DO NOT CLAIM" written on opposite sides.

3. Explain that the purpose of this game is to review the first three articles of the Constitution. For the first ten minutes, have the legislative group review Article I, the executive group Article II, and the judicial group Article III. Each group should note the powers given its branch during this review. If the groups come across powers given to another branch in the articles they are assigned, they should inform the other groups.

4. Next, tell the class that they will hear a series of situations, each involving a power of one or more branches of government. After each situation is read, groups will have one minute to discuss the situation and refer to the Constitution to decide if the power resides with their branch of government. At the end of the minute, you will read the situation again and say, "Claim your powers." Each group must

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then hold up its sign to show "CLAIM" or "DO NOT CLAIM." Each group should be able to explain the reason for its decision or support the decision with a quote from the Constitution.

5. Explain that scoring will be as follows:

--Two points will be given for correctly claiming and justifying the claim of a power.

--One point will be given for correctly voting not to claim a power.

--A zero will be given for incorrectly claiming or not claiming a power.

At the end of the game, a one-point bonus will be given for each power that one group informed another of during the 10-minute review. Other bonus-point situations also exist, as explained on the scoring sheet at the end of the activity.

6. Present the situations below as described in step 4. You may want to record the scores for each situation on the board by duplicating the grid on the scoring sheet.

Situations

1. A bill is to be considered requiring automobile manufacturers to install seat belts in all new cars.

2. A case is being appealed from the Texas Supreme Court.

3. The United States needs an ambassador to Argentina.

4. There is a vacancy on the Supreme Court and a new justice must be appointed.

5. The United States has decided to recognize the new Republic of Xanadu.

6. The state of Arizona is suing California over water rights.

7. The army wants more money for tanks.

8. A law recently passed by the state of Louisiana has been challenged as being unconstitutional.

9. Ralph Z. has been charged with the federal crime of transporting stolen automobiles from Texas to Oklahoma.

10. Impeachment proceedings have been brought against the President.

11. A bill is being vetoed.

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12. A State of the Union message is being prepared.

13. An ambassador from a foreign country has been arrested.

14. A law is declared null and void.

15. War is declared on Transylvania.

16. A federal income tax rebate is being considered.

17. A treaty with a foreign country to import oil is being negotiated.

18. A case has arisen over a collision between a U.S. naval vessel and a privately owned freighter.

19. There is a dispute over land between two Indian tribes who claim the land was given to each of them under separate treaties.

SCORING SHEET

SITUATION	BRANCH					
	Judicial		Executive		Legislative	
	C	NC	C	NC	C	NC
a.		1	2		2	
b.	2			1		1
c.		1	2		2	
d.		1	2		2	
e.		1	2			1
f.	2			1		1
g.		1	2		2	
h.	2			1		1
i.	2			1		1
j.		1		1	2	
k.		1	2			1
l.		1	2			1
m.	2			1		1
n.	2			1		1
o.		1		1	2	
p.		1		1	2	
q.		1	2		2	
r.	2			1		1
s.	2			1		1

BONUS POINTS

Situation:

b. Give the legislative branch 3 bonus points if it claims this power and gives as its reason its power of impeachment.

i. Give the executive branch 3 bonus points if it claims this power and gives as its reason the power to enforce laws. (The FBI would probably arrest Ralph Z.)

j. Give the judicial branch 3 bonus points if it claims this power and gives as its reason that the Chief Justice presides during the trial.

NOTE: There are other possible bonus-point situations. If students suggest other reasonable claims to a power, award points accordingly. Since this might throw off the equal sums for each branch (30 possible for each as currently written and scored), the groups could be told that the winner will be the group which comes closes to its total possible points.

9. DRAFTING THE BILL OF RIGHTS

Introduction:

This activity gives students an opportunity to draft their own Bill of Rights and compare it to the actual ten amendments of the U.S. Constitution. By examining their own values concerning the rights of citizens, students will have a basis for understanding and evaluating what the framers of the Bill of Rights thought important in protecting the citizen from intrusion by the government. This activity should be used as an introduction to the Bill of Rights.

Objectives:

1. To develop understanding of the guarantees of the first amendments of the U.S. Constitution.

2. To examine individual values concerning the rights of citizens vis a vis government intrusion.

3. To enhance critical thinking and writing skills.

Level: Grade 8 and above

Time: Two class periods

Materials: Copies of Handouts 9-1 and 9-2 for all students

Procedure:

1. Discuss with students the events leading to the drafting of the Bill of Rights.

2. Pass out Handout 9-1. (Do not show students the text of the Bill of Rights until after they have completed Handout 9-1.) Explain that students will act as the framers of the Bill of Rights. Divide the class into groups of four. Read the instructions on Handout 9-1 with students. Instruct each group to select a recorder to write down the group's list of rights. Proceed with group work.

3. When students are finished, have each group put their lists on the board. Have the entire class evaluate the lists and come up with a final list.

4. Distribute Handout 9-2. Read each amendment. Compare the amendments with the list of rights the class prepared. Discuss the questions on Handout 9-2.

DRAFTING THE BILL OF RIGHTS

You are members of the First Congress of 1789-1790. The Constitution has been ratified, and the promise to add a Bill of Rights must be kept. These amendments to the Constitution will guarantee certain rights of the people by placing limits on the authority of the government. Draft a list of items that you think are important enough to be included in the Bill of Rights. Be sure to consider all of the freedoms you believe citizens should have to protect them from the government. Be sure that your rights are clearly and specifically stated.

After you have prepared your list, your group must prepare a defense for each item on that list. Why do you think each item is important enough to be included by this Congress?

Present your list and your reasons for each item to the class. The entire class will decide which items to include in the final version of the Bill of Rights. Therefore, your arguments for the items on your list must be convincing.

THE BILL OF RIGHTS

★ AMENDMENT I ★

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances.

1. What were some of the experiences in colonial America that led to this amendment?

2. How is each right related to the others listed in Amendment I?

3. Comment on this quotation by former Supreme Court Justice Black: "Freedom to speak and write about public questions is as important to the life of our government as is the heart to the human body."

4. How do these rights safeguard democracy?

★ AMENDMENT II ★

> A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

★ AMENDMENT III ★

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

★ AMENDMENT IV ★

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

1. Look up the word "militia" in the dictionary. What is the difference between a militia and a regular standing army? What kinds of services could a state militia perform? Why would it be important to prevent Congress from disarming state militias?

2. How do Americans feel about property and privacy?

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3. Does the saying "A man's home is his castle" have any bearing on Amendments III and IV?

4. What were the Writs of Assistance? How were they used? How would Amendment IV prevent these kinds of abuses from happening again?

5. What are the two requirements for issuing a search warrant? How would they contribute to "the right of the people to be secure"?

★ AMENDMENT V ★

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

1. The Fifth Amendment contains six separate rights guaranteed to a person accused of a crime. List them.

2. What is a grand jury? What does it do? How does a grand jury safeguard the rights of a person accused of crime?

3. The "double jeopardy" phrase comes from this amendment. What does the phrase mean? Is this an important right?

4. The words "compelled in any criminal case to be a witness against himself" apply mainly to statements made by an accused person. Can you think of some methods used earlier in history that forced people to confess to crimes? How would the Fifth Amendment prevent this from happening in the United States?

5. The words "due process" have come to mean fundamental fairness. In order to take away a person's life, liberty, or property, the government must have fair laws and procedures. Can you think of examples of fair laws and procedures? Why is this important to people living in a democracy?

6. The last phrase of the Fifth Amendment limits the right of the government to take private property for public use. An example might be private property needed to build a public highway. How do Americans feel about private property?

7. A Supreme Court justice once said that one important test of the quality of a civilization is the way it treats persons accused of crime. Do you agree?

★ AMENDMENT VI ★

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

1. The Sixth Amendment is about procedures in criminal trials. List the six guarantees contained in this amendment.

2. A person charged with a crime is usually arrested and placed in jail. Why would the right to a speedy trial be an important right?

3. What are the advantages of a public trial? Why would secret trials be dangerous?

4. What are the advantages of a jury trial? What does the word "impartial" mean?

5. In the colonial period, colonists were sometimes taken to England for trial. This was one of the grievances against the English government. Why would an accused person want to be tried by people from his own community?

6. How does knowing the charge against you help you and your lawyer prepare a defense?

7. What role do witnesses play in a trial? Why should a person accused of a crime be present to hear what they say?

8. Why does a person accused of a crime need a lawyer?

★ AMENDMENT VII ★

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

★ AMENDMENT VIII ★

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

★ AMENDMENT IX ★

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

★ AMENDMENT X ★

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

1. The Seventh Amendment refers to civil trials. What is the difference between a civil trial and a criminal trial?

2. Is it important that the Bill of Rights provide for a jury trial in a civil case since the Sixth Amendment grants a jury trial in criminal cases?

3. What is bail? How would excessive bail affect an accused person's ability to get out of jail?

4. What would be the effect of excessive bail on the principle that a person is innocent until proven guilty beyond a reasonable doubt in a court of law?

5. Can you think of some historical examples of cruel and unusual punishments? What would you think of a society that burned people at the stake or used the rack or wheel? (NOTE: The death penalty has been challenged as a "cruel and unusual punishment." At the present time, the Supreme Court has upheld the death penalty laws of some states.)

6. Some people thought that a Bill of Rights might be dangerous. They said that if some of the rights of the people were listed, they might lose others not listed. How would the Ninth Amendment prevent this from happening?

7. The Constitution of the United States sets up a federal system--a system where governmental power is divided between the national government and the state governments. However, many people still feared a strong national government. Why restate the principle in the Bill or Rights?

10. REWRITE THE FIRST AMENDMENT

Introduction:

Since the First Amendment provides for a number of interrelated yet different rights, having students look closely at the language will help them better understand its meaning. This brief exercise asks students to interpret and rewrite the amendment. It can be used when studying the Bill of Rights prior to First Amendment case studies.

Objectives:

1. To develop understanding of each guarantee of the First Amendment.

2. To increase understanding of the interrelationship of the guarantees.

3. To enhance reading and writing skills.

Level: Grade 8 and above

Time: 15 minutes

Materials: Copies of Handout 10-1 for all students

Procedure:

1. Distribute the handout. As a homework assignment or in class, have students rewrite each phrase of the First Amendment in the right-hand column.

2. Discuss student interpretations of each phrase.

3. For additional discussion, introduce the notion of possible limitations of these rights. Suggested discussion questions:

--Can you think of any situations in which these rights would not be guaranteed?

--Are there any laws or rules you know of that do limit these rights?

This discussion can lead to the next activity, "Defining the Proper Boundaries for Free Expression."

Handout 10-1 1 of 1

REWRITE THE FIRST AMENDMENT

The Amendment	Its Interpretation
CONGRESS SHALL MAKE NO LAW	
RESPECTING AN ESTABLISHMENT OF RELIGION,	
OR PROHIBITING THE FREE EXERCISE THEREOF;	
OR ABRIDGING THE FREEDOM OF SPEECH,	
OR OF THE PRESS,	
OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE,	
AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES.	

11. DEFINING PROPER BOUNDARIES FOR FREE EXPRESSION

Introduction:

The First Amendment guarantee of free speech is not absolute. This activity gives students an opportunity to explore their attitudes about what the boundaries of free speech should be. It also demonstrates the process of judicial interpretation and the necessity of defining the parameters of constitutional guarantees. The activity should be used after examining the language of the First Amendment.

Objectives:

1. To develop an understanding of the limitations of free speech.

2. To increase awareness of how constitutional rights are interpreted.

3. To examine individual values concerning the limitations of free speech.

4. To enhance reasoning skills.

Level: Grade 8 and above

Time: One class period

Materials: Copies of Handout 11-1 for all students

Procedure:

1. Begin the activity by asking such springboard questions as:

--Does freedom of speech mean a citizen is free to say anything he/she wants at any time, any place, and in any situation?

--Are there limits to freedom of speech?

2. Distribute Handout 11-1. Divide the class into groups of four to five students to discuss and respond to the items. Tell students that group decisions do not have to be unanimous if there are differences of opinion that are not resolved through discussion.

3. After groups have completed the activity, discuss each item. Have groups give their responses and the reasoning behind them. Answers may be recorded on a grid on the chalkboard.

NOTE: This activity is intended to allow students to explore their own values related to what speech the Constitution should or should not protect. Many of these situations have been litigated, but the decisions relate to specific cases, which, when generalized, might be misleading.

WHEN IS SPEECH FREE?

> Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances.

Does the First Amendment protect someone who:	YES	NO
1. makes a political speech in support of a candidate for mayor?		
2. publicly criticizes the president?		
3. makes a pro-Nazi speech outside a Jewish community center?		
4. uses a sound truck to broadcast a message in a residential area?		
5. pickets a grocery story in support of a demand that the store hire more black personnel?		
6. wears a green armband to school to show support for the Irish Republican Army?		
7. telephones the school with a phony bomb threat?		
8. after hearing that American soldiers would be sent once again to fight in Southeast Asia, burned his draft card?		
9. writes a book praising the communists?		
10. attends a meeting of the KKK?		
11. assembles a group to protest some city policy and in doing so blocks sidewalks?		
12. wants to buy an ad in the school newspaper to criticize the school board?		
13. speaks to others so they can plan a series of political kidnappings?		
14. throws a rock, which has the message "Free all political prisoners!" tied to it, through a window at the county jail?		

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	YES	NO
15. urges an angry crowd to march on city hall and "teach those in power a lesson"?		
16. falsely shouts "Fire!" in the gym while it is filled with people watching a basketball game?		
17. writes a book advertised as the "dirtiest book ever written"?		
18. makes false claims in an advertisement for a product?		
19. threatens verbally to kill you?		
20. urges the violent overthrow of the government at some future unspecified time?		
21. carves obscene messages in desk tops at school?		
22. refuses to follow the school dress code?		
23. collects signatures on a petition opposing planned zoning change?		
24. holds a parade without a permit?		
25. hands out leaflets urging passage of the Equal Rights Amendment to members of the state legislature?		
26. embarrasses the governor by telling a large audience about a mistake the governor made?		
27. calls for resistance to the military draft during a declared war?		
28. damages your reputation by publishing lies about your private life?		
29. joins the Communist Part of America?		
30. has a friendly conversation with a neighbor?		

12. CASE STUDIES IN FREEDOM OF RELIGION

Introduction:

Freedom of religion is best defined through court cases that have helped clarify the meaning of the Establishment and Free Exercise Clauses of the First Amendment. This group of nine case studies will allow students to apply their understanding of the First Amendment by examining fact situations, writing their own opinions, and comparing them to the actual court decisions. This activity can be used when studying the First Amendment of the Bill of Rights. It can be done in small groups or as an individual writing activity.

Objectives:

1. To develop understanding of the Establishment Clause of the First Amendment.

2. To develop understanding of the Free Exercise Clause of the First Amendment.

3. To enhance understanding of the balancing of the interests of society and individual freedoms with respect to religious freedom.

4. To enhance reasoning and writing skills.

Level: Grade 11 and above

Time: One class period

Materials: Copies of Handouts 12-1 and 12-2 for all students

Procedure:

To use as small-group activity:

1. Distribute Handout 12-1. Read through the first page with the class, discussing questions 1 through 3. Also discuss the need to balance the interests of society with the rights of the individual.

2. Divide the class into nine groups, assigning one case to each group. Have the groups discuss their cases and write their own opinions, including a decision and reasoning.

3. Have each group explain its case and decision to the rest of the class.

4. Pass out Handout 12-2 and allow students to read the actual court decisions. Compare students' opinions with the court decisions.

To use as individual writing exercise:

1. Pass out Handout 12-1 and discuss the first page.

2. As homework or in class, have students individually read cases and write their own opinions.

3. Pass out Handout 12-2 and allow students to compare their opinions with those of the court.

CASE STUDIES IN FREEDOM OF RELIGION

The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." At the time the Constitution and the Bill of Rights were written, five states had their own official or "established" churches. The Founding Fathers knew that they could never establish a single religion for the entire nation.

1. Define "an establishment of religion."

2. President Thomas Jefferson was against any relationship between church and state. In 1802 he said that the First Amendment was intended to build "a wall of separation between church and state." What did he mean?

3. Define "free exercise" of religion.

4. Read the following cases carefully. After considering the issues and the definitions you have written above, write your opinion on each case, stating your decision and giving your reasoning.

5. Decide whether the issue in each case involves the Establishment Clause, the Free Exercise Clause, or both.

6. How did you balance the interests of society with individual freedoms in each case?

A. Reynolds v. United States (1878)

George Reynolds was a Mormon living in Utah Territory. Because the Mormon religion supported plural marriages and regarded polygamy as a religious obligation, Reynolds had more than one wife. He was charged with violating a law passed by Congress and applicable to the territories. It stated:

> Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than $500, and by imprisonment for a term of not more than five years.

Reynolds argued that this statute was unconstitutional since it violated his right to free exercise of religion under the First Amendment. The statute violated his right to practice the tenets of his religion.

B. State v. Massey (1949)

In a city in North Carolina, members of a cult regularly handled poisonous snakes as part of their religious practices. When the city passed an ordinance making it illegal to handle "poisonous reptiles in such a manner as to endanger public health, welfare, and safety," the cult refused to obey the law. The members were convicted and they appealed to the North Carolina Supreme Court. They argued that they were not endangering public health, welfare, and safety because only the members of the cult handled snakes and they did it voluntarily as part of their religious practice.

C. People ex rel. Wallace v. Lambrenz (1952)

A child was born to parents who were members of the Jehovah's Witnesses. The child had a serious medical problem that would lead to death without an immediate blood transfusion. The tenets of the sect prohibit blood transfusions, and the parents therefore refused to let the child be treated. The case was taken to family court.

D. State ex rel. Holcomb v. Armstrong (1952)

According to a requirement of the Board of Regents at the University of Washington, all registered students must have chest x-rays to test for tuberculosis. A student who was a member of the Christian Science Church refused on the grounds that it was against the tenets of her church and against her own religious beliefs.

E. Gallagher, Chief of Police of City of Springfield, Massachusetts v. Crown Kosher Supermarket (1961)

The Crown Kosher Supermarket in the city of Springfield kept its shop open on Sunday, since Saturday was the Jewish sabbath and Orthodox Jews did not shop on that day. Almost one-third of its weekly business was done on Sunday. No other supermarkets remained open on Sunday. The Crown Kosher Supermarket was charged with violating the Massachusetts Sunday Closing Laws prohibiting the opening of shops and doing business on Sunday. The defendant argued that the law denied him equal protection of the laws, violated his freedom of religion, and contributed to an establishment of religion.

F. Torcaso v. Watkins (1961)

Torcaso, who had been appointed a notary public in the state of Maryland, refused to declare his belief in God. The state Constitution provided that no religious test could ever be required "as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God." Torcaso sued the state for refusing to give him his commission on the grounds that the requirement violated his right to freedom of religion under the First and Fourteenth Amendments of the U.S. Constitution.

G. Sherbert v. Verner (1963)

The Seventh-Day Adventist Church prohibits its members from working on Saturday. Adell Sherbert, a member of the church, was employed at a textile mill and was allowed by her employer to work a five-day week. When her workweek was changed to six days, including Saturday, she refused to work on Saturdays and was fired. She tried to get a job at other mills in the area, but failed because none would let her work a five-day week. She filed for unemployment insurance, but was turned down because she had refused to take "available suitable work" as specified by law in South Carolina. Sherbert argued that this action violated her freedom of religion.

H. People v. Woody (1964)

Indians who were members of the Native American Church smoked peyote, a hallucinogen, as a sacrament during religious ceremonies. A California narcotics law prohibited the use of hallucinogenic drugs, which were "controlled substances." Members of the Native American Church who smoked peyote were arrested and convicted of violating the law. They appealed on the grounds that their freedom of religion was violated.

I. Stone v. Graham (1980)

The Kentucky state legislature passed a statute requiring the posting of a copy of the Ten Commandments on the walls of all public classrooms in the state. The law provided that all copies had to have in small print at the bottom: "The secular application of the Ten Commandments is clearly seen in its adoption as the fundamental legal code of

Western Civilization and the Common Law of the United States." The law also required that copies were to be purchased with funds from private sources. Parents of students asked for an injunction to prevent the state from enforcing the statute on the grounds that the statute violated the First Amendment guarantees of freedom of religion.

DECISION SHEET

A. Reynolds v. United States (1878)

Laws are made for the government of actions. While laws cannot interfere with mere religious belief and opinions, they can with practices. Freedom of religion does not apply to those actions which violate social duties or that subvert good order. Polygamy is considered an offense against society. It is impossible to believe that the constitutional guarantee of religious freedom was intended to prohibit legislation in respect to this most important feature of social life.

B. State v. Massey (1949)

The city ordinance prohibiting snake handling is a valid exercise of police power--the power to protect the lives, health, morals, welfare, and safety of the people. This form of religious worship must give way to the greater value of public safety.

C. Wallace v. Lambrenz (1952)

The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. Parents may be free to become martyrs themselves. But it does not follow that they are free...to make martyrs of their children before...they can make that choice for themselves.

D. Holcomb v. Armstrong (1952)

The State Board of Regents has the obligation to protect the community under its supervision. This concern for society has a priority over an individual's right to religious freedom.

E. Gallagher v. Crown Kosher Supermarket (1961)

The Massachusetts law is valid because it did not deny the Jewish merchant the equal protection of the laws required by the Fourteenth Amendment. Nor did this law establish a religion by requiring the closing of most businesses on Sunday. The point is made again that these laws, originally religious in nature, are now secular in character.

F. Torcaso v. Watkins (1961)

The Maryland Constitution clause requiring a belief in God as a condition for holding public office violated the Freedom of Religion Clause of the First and Fourteenth Amendments. The Maryland Constitution set up a religious test which was designed to, and did, bar every person who refused to declare a belief in God from holding a public office in Maryland.

G. *Sherbert v. Verner* (1963)

No state may "exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Nonbelievers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation."

H. *People v. Woody* (1964)

The Indians do have the right to use peyote as part of their religious ceremony. Since there is no clear evidence that peyote was a dangerous drug, the Indians cannot be prosecuted under the state's narcotics law.

I. *Stone v. Graham* (1980)

The purpose of the statute was plainly religious in nature. The avowed secular purpose was not sufficient to avoid conflict with the First Amendment. In order to have a secular legislative purpose, the effect of the law must be one that neither advances or inhibits religion. Also, the law must not promote excessive government involvement with religion. Since the Ten Commandments are not confined to secular matters, the purpose of the statute is to induce school children to read, think about, and perhaps obey their teachings. While this might be a desirable purpose in private matters, it is not permissible under the Establishment Clause of the First Amendment.

Answer to Question 5, Page 1, Handout 12-1

Free exercise cases: B, C, D, G, H
Establishment case: I
Both: A, E. F

13. UNDERSTANDING THE FOURTH AMENDMENT: A ROLE PLAY

Introduction:

In this activity students examine development of the right to privacy from colonial times to contemporary interpretations of Fourth Amendment guarantees. Students learn under what circumstances a search warrant is or is not required and role play situations that do not require warrants. It is recommended that a police officer be invited to class to participate in the discussion.

Objectives:

1. To help students recognize the violations of privacy rights by the writs of assistance during the colonial period.

2. To increase awareness of the importance of Fourth Amendment rights to the framers of the Bill of Rights.

3. To develop understanding of the provisions of the Fourth Amendment.

4. To help students recognize situations (as interpreted by the courts) in which a search warrant is or is not needed.

5. To enhance critical thinking skills.

Level: Grade 8 and above

Time: One class period

Materials: Copies of Handout 13-1 for all students; one copy of Handout 13-2 cut apart

Procedure:

1. Ask students such springboard questions as:

--Have you heard the saying "a man's home is his castle"? What does it mean?

--What do you think "privacy" and "secure" mean?

--When might someone want to search a person's house? When might a police officer want to search?

2. Distribute Handout 13-1. Read the information and discuss the questions with students.

3. Explain that students will role play situations in which search warrants are not necessary. Divide the class into seven groups, giving each group one of the situations on Handout 13-2.

4. Instruct groups to create roles and plan their role plays to illustrate the situations described.

5. Have each group perform its role play in front of the class. After each role play, ask students these questions:

--What kind of search was enacted?

--What was the reason for the search?

--Why was a warrant not needed?

Ask the police officer to comment on the search after each role play.

UNDERSTANDING THE FOURTH AMENDMENT

Origins of the Right of People to Be Secure: The Writs of Assistance

During the 1700s, England wanted to control the trade of goods between England and the colonies. It passed laws that said that certain goods could be bought and sold only with England. If colonists bought and sold goods with other countries, they had to pay taxes to England.

This made colonists mad. They tried to get around these laws by hiding goods from other countries in their houses.

To control this, English officials searched colonists' homes, buildings, and ships. To make this legal, England said the courts could issue orders, called writs of assistance. These writs allowed officials to search for hidden goods. The writs were similar to search warrants, but they allowed officials to search colonists at any time. The colonists were angry because they thought the writs violated the rights to privacy that Englishmen in England had.

These practices became one of the many reasons that led to the Revolutionary War.

1. What were the writs of assistance?

2. How did the English officials use the writs?

3. Why did colonists think the writs violated their rights to privacy? Do you agree?

Privacy and the Fourth Amendment

The writers of the Constitution believed that privacy was a basic right of citizens and included this guarantee in the Bill of Rights.

★ AMENDMENT IV ★

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

1. What do you think is meant by unreasonable searches and seizures?

2. What are the three things the amendment demands before a search warrant can be issued?

3. How are search warrants as defined by the Fourth Amendment different from the writs of assistance?

Search and Seizure With a Warrant

Police officers need to conduct searches to gather evidence against persons suspected of crimes. In interpreting the Fourth Amendment, the courts have set down general guidelines for issuing search warrants for searches and seizures. To get a search warrant, the person--usually a police officer--must have probable cause. This means that he/she has facts and information that provide a good reason to believe that a search is justified. The officer must swear under oath that the information he/she is giving is true to the best of his/her knowledge. The search warrant must specifically describe the person or place to be searched and the items to be seized. The warrant does not authorize a general search. The warrant must be issued by a judge.

Searches Without a Warrant

The courts have recognized that there are some situations in which a search can be conducted without a search warrant.

--Lawful inspection: airport and border searches.

--Consent: a person agrees to be searched without a warrant or probable cause.

--Incident to lawful arrest: police search a lawfully arrested person for weapons or evidence before it is destroyed.

--Emergency: situations such as bomb threats and fires when there isn't time to get a warrant.

--Plain view: objects related to a crime are in plain view of an officer during lawful performance of his/her duties.

--Stop and frisk: a police officer stops a person when the officer has good reason to believe the person has weapons and is acting suspiciously.

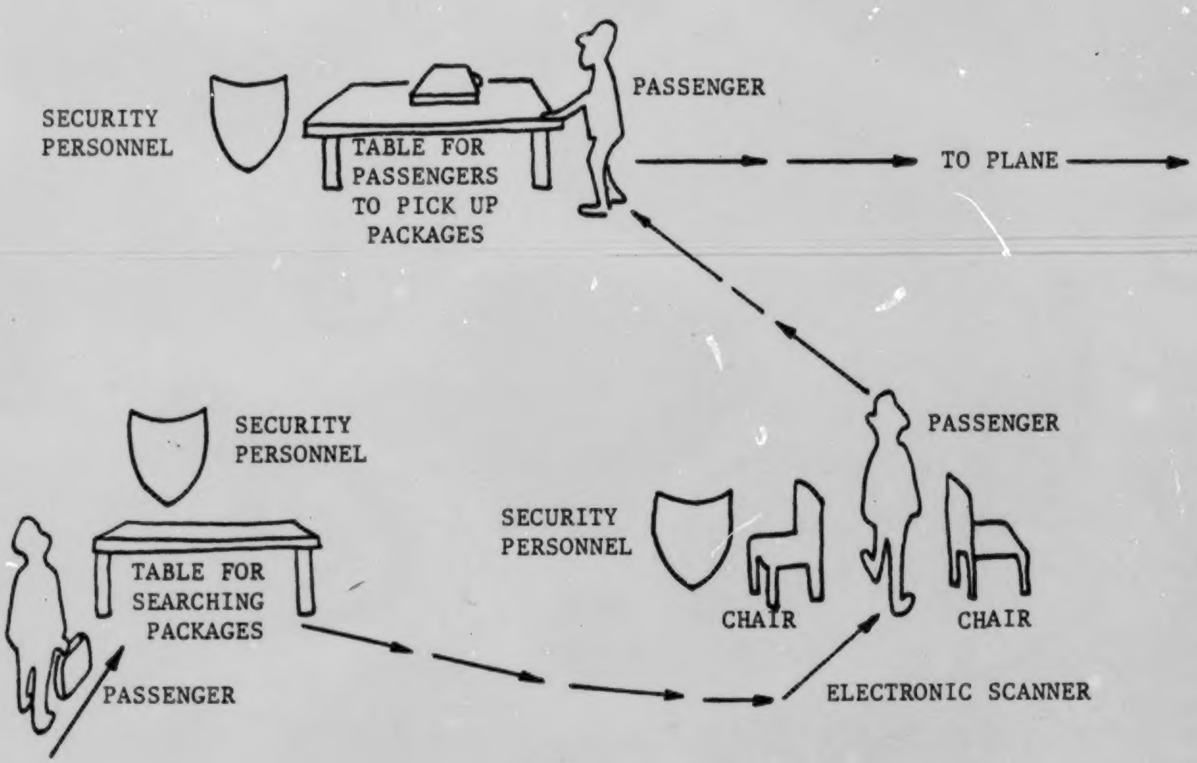
--Automobile searches: an officer has good reason to believe an automobile contains stolen goods.

ROLE-PLAYING INSTRUCTIONS
FOR STUDENTS

I. LAWFUL INSPECTION

Set up a scene for searching passengers about to board a commercial airplane. Give the security personnel doing the searching badges to show their authority.

The searchers should show courtesy to all the passengers, but they should also be insistent about searching luggage, packages, purses, or anything the passengers are carrying. Each passenger must also walk through the electric scanner.



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II. WITH CONSENT

Two officers knock on the door of a home. The owner of the house answers the door. The officers ask to search the room of the owner's 16-year-old son for narcotics. The officers say:

--You need not give consent if you do not wish to.
--The search will not be made if you do not consent.
--If you do consent, anything we find may be used against your son in a criminal prosecution.

The father gives consent, and the officers find some narcotics under the son's pillow.

III. INCIDENT TO ARREST

A person breaks into a drugstore window and sets off a burglar alarm. An officer, responding to the alarm, arrives just as the burglar is climbing into his car. The officer arrests the burglar and searches his car, finding watches, electric razors, and other items possibly stolen from the drugstore or other stores.

IV. EMERGENCY

Neighbors call the police to report that they have not seen a 70-year-old man in or around his home for the past two days. The neighbors say they are worried because he lives alone and had a heart attack a few years previously. The man did not mention that he was leaving on a trip.

When the officers approach the house, they see the newspapers for the past two days at the front door. After ringing and knocking at the front and back doors, they look in and knock on the windows. They try the doors and windows. Finding all locked, they break a window and enter.

V. PLAIN VIEW

A police officer stops a car for a routine license check. He notices an open whisky bottle on the seat beside the 16-year-old driver. He arrests the driver.

VI. STOP AND FRISK (TEMPORARY DETENTION)

An officer sees three men on a street corner. They take turns walking down the street, looking in store windows, and coming back to the corner. After they have repeated this five or six times, the officer approaches them, identifies himself as a police officer, and asks for their names. They mumble answers. Fearing that they might have a gun, the officer pats them down and finds guns on two of the men. The officer arrests these two men.

VII. SEARCHING AN AUTOMOBILE FOR ILLEGAL ITEMS

A sheriff receives a phone call from a reliable informant, who says that some stolen merchandise is now on a truck leaving for another state. The sheriff gives the license plate number, description, and location to one of his deputies to go quickly and search the truck.

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14. UNDERSTANDING THE FIFTH AND SIXTH AMENDMENTS: THE CASE OF GERALD GAULT (1964)

Introduction:

An effective way to teach the Fifth and Sixth Amendments is to examine a case in which many of the criminal due process rights were denied. In Re Gault is such a case. This landmark juvenile case established fundamental Fifth and Sixth Amendment due process rights that previously had not been required in the more informal juvenile justice system. In this activity, students examine the Fifth and Sixth Amendment rights and then determine which rights were not afforded Gerald Gault. The use of a contemporary juvenile case in studying the Bill of Rights will increase student motivation and understanding.

NOTE: Not until the passage of the Fourteenth Amendment were the guarantees of the Bill of Rights made applicable to the states. The Fourteenth Amendment Due Process Clause thus incorporates the guarantees of the Fifth and Sixth Amendments. The teacher can introduce this concept at his/her discretion.

Objectives:

1. To develop understanding of the criminal due process rights guaranteed by the Fifth and Sixth Amendments.

2. To increase understanding of these rights as they apply to juveniles.

3. To enhance reading and critical thinking skills.

Level: Grade 11 and above

Time: One class period

Materials: Copies of Handouts 14-1 and 14-2 for all students

Procedure:

1. Distribute Handout 14-1. After students have read the handout, ask them to list the rights guaranteed in the amendments. Discuss the meaning of each right as you write it on the chalkboard.

2. Distribute Handout 14-2. Allow time for students to read the case.

3. In a second column on the board, have students list the Fifth and Sixth Amendment rights denied to Gault. The lists should be similar to the one shown below.

Due Process Rights Guaranteed by the 5th and 6th Amendments	Due Process Rights Denied in the Gault Case
1. Grand jury indictment for a capital crime (5th)	
2. Protection against double jeopardy (5th)	
3. Protection against self-incrimination (right to remain silent) (5th)	1. They were not advised of their right against self-incrimination.
4. Right to speedy and public trial (6th)	
5. Trial by impartial jury (6th)	
6. Notice of nature and cause of charges (6th)	2. They weren't given proper notice of the initial hearing or the specific charge against Gerald.
7. Right to confront witnesses against accused (6th)	3. They were not told of their right to cross-examine witnesses.
8. Right to call witnesses (6th)	4. They were not advised of their right to call witnesses.
9. Right to counsel (6th)	5. They were not informed of their right to counsel.
	6. They were not advised of their right to a transcript of the proceedings.

4. Explain to students that the less formal procedures in the juvenile court system were a result of a reform movement at the turn of the century which was against treating juveniles like adult criminals. Rather, juvenile courts were supposed to act as guardians of delinquent children and serve a rehabilitative role. Ask the following questions:

--What do you think are the advantages and disadvantages of this type of approach?

--Would the special nature of juvenile court proceedings justify not requiring the right to notice of charges? The right to counsel? The right to cross-examine witnesses? The right to remain silent? Give reasons.

5. Tell students that the court ruled in favor of Gault. The following rights were guaranteed to juveniles as a result of this case:

--Notice of Charges: being told what the charges are far enough in advance to prepare a case.

--Right to Counsel: being told of the right to have a lawyer.

--Right to Confront and Cross-Examine Witnesses: being able to hear the testimony of the witnesses for the prosecution and defense.

--Privilege Against Self-Incrimination: being told that anything the accused says might be used against him/her.

RIGHTS OF THE ACCUSED

AMENDMENT V

No person shall be held to answer for a capital...crime, unless on a presentment or indictment of a grand jury,...nor shall any person be subject for the same offense to be twice put in jeopardy of life and limb; nor shall (the person) be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law...

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNDERSTANDING THE 5TH AND 6TH AMENDMENTS: THE CASE OF GERALD GAULT

On June 8, 1964 in Gila County, Arizona, a 15-year-old boy named Gerald Gault and his friend Ron Lewis were taken into custody by the sheriff as a result of a complaint made by a neighbor of the boys, Mrs. Cook. She said that she had received an obscene telephone call and thought the boys had done it. Gerald was already on probation as a result of being with another boy who had stolen a lady's wallet.

When Gerald was arrested, his parents were at work. No word was left that he had been arrested. His parents learned later that evening from the Lewis family that Gerald had been taken to the children's detention home. Gerald's mother went to the detention home and was informed that there would be a hearing the next day.

The day of the hearing, Officer Flagg, a probation officer, filed a formal petition against Gerald. It said only that Gerald was under 18, under the jurisdiction of the juvenile court, and a "delinquent minor." There were no facts given for this conclusion, and no charges were made known to the Gault family.

Mrs. Gault attended the hearing. Mrs. Cook was not present. No one was sworn in at the hearing. No transcript or recording of the proceedings was prepared. At the hearing, the judge questioned Gerald about the telephone call. Afterward, there were conflicting recollections about his testimony. Mrs. Gault recalled that Gerald said he only dialed Mrs. Cook's number and handed the phone to his friend Ronald. Officer Flagg recalled that Gerald "admitted making one of these (obscene) statements."

On June 12, Gerald was released from the detention home. No explanation was given in the record as to why he was kept in the detention home or why he was released. On the day of Gerald's release, Mrs. Gault received a note on plain paper, not letterhead, from the probation officer. It said:

> "Mrs. Gault:
> Judge McGhee has set Monday, June 15, 1964 at
> 11:00 a.m., as the date and time for further
> hearings on Gerald's delinquency."
> /s/ Flagg

At the June 15 hearing, Gerald and his parents, Ron Lewis and his father, Officer Flagg, and another officer were present. Mrs. Cook was not present. Mrs. Gault asked that Mrs. Cook be brought to court so that she could identify the boy who had done the talking. The judge said "she didn't have to be present at the hearing." Again there was conflicting testimony. There was no record made of this hearing, but

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Gerald's parents said that Gerald again testified that he only dialed the number and Ron had done the talking. Officer Flagg agreed that Gerald had not admitted to making the obscene remarks.

At the June 15 hearing, the probation officers filed a report with the court listing the charge as "Lewd Phone Calls." The Gaults were not informed of this. At the end of the hearing, the judge committed Gerald as a juvenile delinquent to the state industrial school "for the period of his minority (until 21), unless sooner discharged by due process of law." Gerald was thus committed to reform school for 6 years. If he had been over 18 and tried in an adult court, the penalty would have been a fine of $5 to $50 and a maximum of 2 months in jail.

No appeal is permitted by Arizona law in juvenile cases. So Gerald's parents filed a petition for a writ of habeas corpus--an order requiring a person to be brought before a judge to determine whether he/she is being legally held. The Superior Court dismissed the writ, so the Gaults asked the Arizona Supreme Court to review the case. The Gaults claimed that they had been denied due process of law. The Arizona Supreme Court ruled against the Gaults.

The Gaults then took their case to the United States Supreme Court.

15. FREE PRESS - FAIR TRIAL: THE SAM SHEPPARD CASE

Introduction:

When studying the Bill of Rights, students need to understand that constitutional rights may come into conflict. The famous Sheppard case illustrates the inherent conflict between two constitutional guarantees: the First Amendment's guarantee of freedom of the press vs. the Sixth Amendment's guarantee of a speedy and public trial by an impartial jury. Which right deserves priority? This activity demonstrates how the Supreme Court resolved this issue. It should be used after an examination of the First and Sixth Amendments.

Objectives:

1. To reinforce understanding of the First and Sixth Amendments.

2. To develop awareness of how conflicts between rights are judicially resolved.

3. To enhance reading and critical thinking skills.

Level: Grade 11 and above

Time: One-half to one class period

Materials: Copies of Handouts 15-1 and 15-2 for all students; newspapers

Procedure:

1. Pass out newspapers to the class. Have students work in pairs to locate news articles about local crimes. Have them examine the articles for objectivity in reporting. Discuss student findings.

2. Discuss the following issues with the class:

   --What constitutes an impartial jury?

   --What should be the role of the media in reporting crimes?

   --What should be done when the reporting of a sensational crime makes selecting an impartial jury difficult?

   --Which right deserves priority, free press or fair trial?

   --How can we decide what to do?

3. Distribute Handout 15-1. Discuss the important facts and issues in the case. Have students vote on what they think the outcome of the case should be.

4. Pass out and read Handout 15-2. Did the class and the court reach the same decision? Why or why not? Would the court's decision apply to any of the local cases students found in their search?

FREE PRESS - FAIR TRIAL: THE SAM SHEPPARD CASE

What happens when rights guaranteed in the Constitution conflict? In recent years, an interesting problem has developed. The First Amendment's guarantee of freedom of the press has been on a collision course with the Sixth Amendment's right to a "speedy and public trial, by an impartial jury." It is obvious that newspaper and television coverage of a sensational crime can prejudice the community against an accused to the point where it becomes difficult to select an impartial jury. If or when this happens, what can or should be done? How do we resolve the dilemma of two great valued rights in collision? Let us see how the Supreme Court has grappled with this value conflict.

Sheppard v. Maxwell, Warden (1966)

It has remained a mystery to this very day. On July 4, 1954 Marilyn Sheppard was bludgeoned to death in the upstairs bedroom of her home. Her husband, Sam Sheppard, told police that he had been sleeping in the downstairs living room when he had been awakened by a noise. He went upstairs to investigate and was knocked unconscious. When he regained consciousness, he saw that his wife was probably dead. He then checked his son's room and found that he had not been touched. Hearing a noise he hurried downstairs, saw a "form," chased it, fought with it, and was knocked unconscious again. When he recovered, he phoned his friends and they came at once and phoned the police.

The Sheppards were a prominent family in Bay Village, Ohio, a suburb of Cleveland, and the story hit the headlines at once. The headlines and stories which were featured on the front pages of the Cleveland newspapers were:

"Doctor Balks At Lie Test"
"Why No Inquest? Do It Now, Dr. Gerger"
"Why Don't Police Quiz Top Suspect"
"Why Isn't Sam Sheppard in Jail?"
"Quit Stalling - Bring Him In"

Among the front-page editorials that appeared between the day of the murder and the day of the inquest was one which declared that "someone is getting away with murder" because of "friendships, relationships, hired lawyers, a husband who ought to have been subjected instantly to the same third-degree to which any other person under similar circumstances is subjected." The implications seemed to be that the authorities were treating the socially prominent Sheppard with kid gloves.

When the inquest took place, it was held in a school gymnasium with reporters, television cameras, radio technicians, and hundreds of

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From The Idea of Liberty by Isidore Starr, West Publishing Company, Box A, 170 Old Country Road, Mineola, NY 11501. Reprinted with permission.

spectators. At one point, Sheppard's counsel was ejected by the coroner, who received cheers, hugs, and kisses from some of the women in the audience.

Sheppard was arrested and his trial began two weeks before the November general election. Both the trial judge and the chief prosecutor were candidates for reelection. The names and addresses of the jurors were published in the newspapers. During the trial the jurors were not sequestered, but were permitted to go home. The courtroom was so crowded with reporters, cameramen, television and radio personnel that there was much confusion and it was difficult for witnesses and counsel to be heard.

Sheppard was found guilty and his appeals to the state court of appeals, as well as to the Supreme Court in 1956, were denied. In 1965, Sheppard retained the services of a young lawyer, F. Lee Bailey, who decided to institute a writ of habeas corpus proceeding in the United States District Court. This "great writ" requires that a person who claims that he or she is being illegally detained be brought before a judge to determine the legality of his or her confinement. This writ is generally sought by those who claim that their conviction violated due process of law requirements. Sheppard won in the District Court, lost in the United States Court of Appeals, and appealed to the United States Supreme Court.

If you had had to decide this case, what would you have done? How would you have reasoned? Do you think Sheppard deserved another trial?

DECISION

Sheppard v. Maxwell, Warden

With only Justice Black dissenting, the court decided that Sheppard had been denied due process of law.

In the words of Justice Clark:

> For months the virulent publicity about Sheppard and the murder had made the case notorious...Furthermore, the trial began two weeks before a hotly contested election at which both Chief Prosecutor Mahon and Judge Blythin were candidates for judgeships...The fact is that bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom, hounding most of the participants in the trial, especially Sheppard...
>
> The carnival atmosphere at trial could easily have been avoided since the courtroom and the courthouse premises are subject to the control of the court...Bearing in mind the massive pretrial publicity, the judge should have adopted stricter rules governing the use of the courtroom by newsmen...the court should have insulated the witnesses...the court should have made some effort to control the release of leads, information, and gossip to the press by police officers, witnesses, and the counsel for both sides.
>
> Since the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom, we reverse the denial of the habeas petition. The case is remanded to the District Court with instructions to issue the writ and order that Sheppard be released from custody unless the State puts him to his charges again within a reasonable time.

Sheppard was given a second trial and was found not guilty.

16. A VISITOR FROM OUTER SPACE

Introduction:

This highly motivating activity requires students to think about the relative importance of the guarantees of the Bill of Rights by having them select five that they would surrender to a "visitor from outer space." It can be used as an introductory or concluding activity to the study of the Bill of Rights.

Objectives:

1. To stimulate examination of values about the guarantees of the Bill of Rights.

2. To develop understanding of the interrelationships among individual rights.

Level: Grade 8 and above

Time: One class period

Materials: Copies of Handout 16-1 for all students

Procedure:

1. Distribute Handout 16-1. Read through the instructions and ask students to make their selections. Students can work individually or in groups of three.

2. List the ten rights on the board and poll the class on their ranking of each freedom. Ask students to give the reasoning behind their choices.

A VISITOR FROM OUTER SPACE

It is 1993. You are living a quiet, prosperous life in New Mexico. You are quietly watching television with your family when a special news bulletin comes over the TV station. You immediately see that this is not the normal type of news bulletin because there is what looks like a very strange creature on the screen--the only thing familiar is that he is speaking English. He tells you that he and his people have gained control over all of the communications networks in the United States and that everyone had better pay attention to what he has to say. You change the channel--and just as he said--there he is on every station. He begins to speak very loudly. You gather your family around you because you are beginning to worry about what he is going to do. His speech is as follows:

> My name is STHGIR. I am from the planet NOITUTITSNOC in another galaxy where the inhabitants are far superior to the beings on this planet EARTH. Just as we have gained control over the communications of the United States, we have the ability to take complete control over every one of your lives. We do not want a war between our planet and yours, but we do want to control some things so that we can live in peace and harmony with you. We have looked at some of your laws and the way your government operates and have found that they give too much freedom to the individual. Therefore, we are going to conduct a survey to try and arrive at a decision about which both you and I will be happy. As I have said, I do not want to take everything away from you. But I can't allow you to continue to live as you have in the past. Therefore, I am giving you a list of ten of the rights that you now have according to your Constitution. You are to look over the list and decide which of the ten are most important to you. I will allow you to keep FIVE of the ten rights, the five which get the most votes from all the citizens of the United States. You are to rank the following rights in the order in which you would give them up, with 1 being the one you would give up last and 10 being the one you would give up first. After you have completed your ranking, you will receive further instructions.

From Responsibilities and Rights in Schools, 1978, by Donald P. Vetter and Linda Ford of the Carroll County Public Schools, Westminster, Maryland 21157. Reprinted with permission.

______ Right to bear arms

______ Right of freedom of speech

______ Right to legal counsel

______ Right to protection from cruel and unusual punishment

______ Right to freedom of press

______ Right to a jury trial

______ Right to freedom of religion

______ Right to peacefully assemble

______ Protection from self-incrimination

______ Right to protection from unreasonable searches and seizures

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17. THE ALIEN AND SEDITION ACTS (1798): THREE CASE STUDIES

Introduction:

This activity provides three case studies of prosecutions under the Alien and Sedition Acts, which will allow students to explore the issues of the misuse of federal power and congressional violation of the First Amendment during the early Federalist period. It can be used as a lead-in to a discussion of federal versus state power and the need for judicial review. Students should have some familiarity with the Alien and Sedition Acts before the activity begins.

Objectives:

1. To develop understanding of the provisions of the Alien and Sedition Acts and the conditions that brought them about.

2. To encourage examination of the issue of congressional violation of First Amendment freedoms.

3. To develop understanding of the debate over the right of states to nullify federal law.

4. To enhance critical thinking and research skills.

Level: Advanced grade 8 and above

Time: One to two class periods

Materials: Copies of Handout 17-1 for all students

Procedure:

1. Divide the class into four groups. Distribute Handout 17-1 and have students read the three cases and review the facts within their groups.

2. Discuss the questions on the last page of the handout with the entire class, or have students discuss them within their groups.

3. Assign each group of students one of the following topics to research:

--The Alien and Sedition Acts: What were the motives of those who sponsored the Acts? Why were the Acts unconstitutional? What immediate and long-term effects did the Acts have?

--Jefferson's reaction to the Acts: Why did he oppose the Acts? Why did he write the Kentucky Resolution?

--Virginia and Kentucky Resolutions: According to the Resolutions, what are the limits of power of the federal government? Why did Virginia and Kentucky believe each state, and not the Supreme Court, should be the final judge of how much power the federal government should have over the state? Why did the Virginia Resolution consider the Acts dangerous?

--Nullification: What is meant by nullification? Why did many people support the principle of nullification? How is it related to states' rights? Is nullification an issue today?

4. Have the groups give reports on the results of their research. Allow time for questions and discussion.

THE ALIEN AND SEDITION ACTS (1798): THREE CASE STUDIES

Introduction

The First Amendment says "Congress shall make no law...abridging the freedom of speech, or of the press..." Yet in 1798, Congress passed laws which in effect did just that. They were called the Alien and Sedition Acts.

In 1798 hostilities between the Federalist and Republican Parties were growing. The fact that a Federalist President, John Adams, and a Republican Vice-President, Thomas Jefferson, were elected in 1796 didn't help ease tensions. The Federalists wanted to strengthen their party and remain in power. They were criticized by Republicans and wanted to silence them. Further, the Republican party was growing because the majority of aliens who became citizens joined the Republican Party. During this period, the country narrowly avoided full-scale war with France, and anti-French feelings were very strong.

The Federalist majority in Congress passed a series of laws known as the Alien and Sedition Acts. These laws stated that

1. Aliens had to live in the United States for 14 (instead of 5) years before becoming citizens.

2. The President could deport or jail aliens whom he considered dangerous to the peace and safety of the country.

3. American citizens who wrote, printed, or said anything "false, scandalous, and malicious" against the government could be fined or jailed.

The Republicans protested against these laws as a misuse of federal authority. They said the sedition law violated the First Amendment of the Constitution.

The following are cases of three men prosecuted under the Alien and Sedition Acts.

The Case of a Bad Joke

In 1798 Luther Baldwin was unknown outside the New Jersey village where he lived. In June of 1798 the newspapers reported that Baldwin had expressed the wish that President Adams were dead.

Actually, Baldwin did not put his thoughts in exactly those words. On his way to New England, President Adams had passed through New Jersey, where he was greeted with cheers and the firing of a cannon. Luther Baldwin took this occasion to get drunk. Baldwin's drinking companion said to him as they watched the presidential procession, "There goes the President, and they are firing at his ---." Luther, a little merry, replied that he did not care if they fired through his ---.

The Federalists saw nothing humorous in this incident, and Baldwin was charged with sedition. To wish for the President's death was sedition of the worst kind. Baldwin was brought to trial and sentenced to pay a fine of $100, but he was not imprisoned.

David Brown: The Priest of Sedition

Nothing might seem more innocent than the raising of a liberty pole. However, when topped with the French flag, liberty poles were regarded by the Federalists as symbols of sedition and revolution.

Such a liberty pole was raised in Dedham, Massachusetts, with a sign reading:

> NO STAMP ACT, NO SEDITION AND NO ALIEN ACTS, NO LAND TAX, DOWNFALL TO THE TYRANTS OF AMERICA; PEACE AND RETIREMENT TO THE PRESIDENT; LONG LIVE THE VICE-PRESIDENT.

The local Federalists marched upon the pole to cut it down. The Republicans massed to defend it.

It was soon determined that this liberty pole was the work of David Brown. Brown was a drifter who had fought in the Revolutionary army, traveled around the world on a merchant ship, and wandered around the United States going from job to job. His reading and observation led him to conclude that all government was a conspiracy of the few against the many for the benefit of the rich and powerful. He said that the Federalist government imposed taxes to enrich the few.

Brown found admirers wherever he went. But in the eyes of some people, he was only a vagabond who was against the government because he was a failure and an outcast. He might have lived and died a harmless radical except that the Federalists branded him a public menace and named him the "Priest of Sedition." Raising a liberty pole in Dedham was an invitation to disaster.

An attempt was made to arrest Brown in Dedham, but he had left town before a warrant could be issued. The law, however, caught up with him and he was arrested on a charge of sedition and held in the Salem jail under $4000 bail. Brown was tried in June of 1799 in the Circuit Court of the United States, where he was found guilty and sentenced to a prison term.

The Case of Matthew Lyon

Matthew Lyon was a Republican member of Congress from Vermont. He was born in Ireland and came to America as a poverty-stricken young man. He managed to accumulate a large amount of property and married the daughter of the governor of Vermont.

One day in a conversation with friends, Lyon was criticizing the people from Connecticut because they didn't understand the ideas of Thomas Jefferson. Their politicians only presented the point of view of the Federalists. These remarks were overheard by Roger Griswald, a Federalist leader in the House of Representatives. Griswald interrupted Lyon with an insult, and Lyon retaliated by spitting in Griswald's face.

Soon after, when both were seated in Congress, Griswald attacked Lyon with a cane. They ended up in a scuffle on the floor, and Griswald had to be pulled off Lyon by the legs.

The Federalists were outraged by Lyon's behavior and demanded that he be expelled from Congress. He was a nasty, spitting animal, an Irishman, and no gentleman.

After 14 days of debate in Congress, the Federalists failed to gain enough support to expel Lyon.

Lyon continued to enrage Federalists. He published an article in the Vermont Journal containing speeches he had made in Congress. He also published an article urging Congress to commit President Adams to a madhouse. For this he was arrested under the Sedition Act. At his trial Lyon argued that the Sedition Act was unconstitutional. The jury did not agree. He was sentenced to four months' imprisonment and fined $1000.

The Federalists hailed Lyon's conviction as a triumph of law over opposition to the government and a victory over the excesses of the press.

Questions for Discussion

1. What was the crime committed in each case?

2. Do you think that what each did was a crime? Why or why not?

3. What conditions might cause the government to punish people for criticizing its actions? Did these conditions exist in any of these cases?

4. Do you think it was a violation of the First Amendment guarantee of free speech to prosecute these men under the sedition law? Explain your reasoning.

5. Would these acts be considered crimes today?

18. MARBURY V. MADISON (1803)

Introduction:

While the landmark case of Marbury v. Madison is always included in U.S. history texts, it is not often dealt with in sufficient detail for students to understand its complexity and importance. This activity's case study and play allow students to further explore the concepts of judicial review and separation of powers. The activity can be used when the case is introduced in classroom texts.

Objectives:

1. To develop understanding of the concept of judicial review.

2. To help students recognize the importance of the Marbury case in establishing the power of the judiciary.

3. To enhance understanding of separation of powers.

4. To enhance reasoning skills.

Level: Grade 11 and above

Time: One to two class periods

Materials: Copies of Handouts 18-1 through 18-3 for all students; four copies of Handout 18-4

Procedure:

1. Distribute Handout 18-1. Have students read and discuss the case. Plotting the facts on a time line will be helpful.

2. Divide the class into four groups representing four points of view:

--Group 1: The Federalists and John Adams
--Group 2: The Democratic Republicans and Thomas Jefferson
--Group 3: William Marbury and other appointed justices of the peace
--Group 4: John Marshall

3. Have each group discuss the case from its point of view. Have each group answer the following questions and select a spokesperson to present their answers to the rest of the class:

--Who are you?
--What is your role in the Marbury vs. Madison case?
--How do you want the case decided?

4. If time permits, understanding of John Marshall's dilemma and the constitutional issues involved can be enhanced by having four students enact "The Devil and Chief Justice Marshall." To maximize effectiveness, select the students in advance and have them rehearse their roles. Costumes or masks are encouraged.

5. Ask students, in small groups or as a whole, how they would make a decision if they were John Marshall.

6. Distribute Handout 18-2 and read through the decision with students. Ask students how the Federalists, the Democratic-Republicans, and William Marbury and the other justices of the peace might have reacted to the decision.

7. As a follow-up, have students read and discuss Handout 18-3.

A CRISIS FOR THE HIGH COURT

Introduction

Before the Marbury case, the U.S. Supreme Court won little glory or even attention. It had heard very few cases, let alone important ones. Its first Chief Justice, John Jay, resigned in 1795 to become governor of New York. The man nominated to be his successor, John Rutledge, was rejected by the Senate. Oliver Ellsworth was confirmed but resigned after serving only four years.

Then came John Marshall. Behind his careless dress and genial manner were a brilliant mind and a persuasive personality. Appointed Chief Justice while serving as secretary of state in the Adams administration, the eloquent Federalist from Virginia dominated the Supreme Court for 34 years. The vision, the logic of his decisions established the dignity and influence of the Court. He made it truly co-equal with the presidency and the Congress.

Marbury v. Madison

John Adams was in the final days of his presidency when Congress, which was controlled by the Federalists, passed some last-minute laws. Among these laws was one that gave President Adams the power to appoint justices of the peace for the District of Columbia. With less than a week to go, he appointed 42 justices and the Senate confirmed them. Because the proper paperwork was lengthy, there was not enough time to deliver all the commissions to the new appointees.

Thomas Jefferson, who succeeded Adams to the presidency, was elected by the Democratic-Republican party. The Republicans also took control of the majority of seats in Congress. One of their first acts was to abolish most of the court positions created by the Federalists. The Republicans refused to deliver the remainder of the commissions.

One of the men who did not receive his commission was William Marbury. Marbury and three others took the issue before the U.S. Supreme Court. They asked that the court issue a writ of mandamus--an order that a public official carry out a specific duty. He wanted the writ to force Secretary of State James Madison to release their commissions. Marbury argued that the Constitution gave the court original jurisdiction to hear the case. He further claimed that the Judiciary Act passed by Congress in 1789 gave the court the power to issue the writ of mandamus.

The case stirred much political controversy. The Supreme Court was dominated by Federalists. Chief Justice Marshall knew that the Republicans would try to impeach justices from the court if he ordered Madison

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to deliver the commissions. In addition, the Republicans might refuse to obey an order of the court. Either of these actions could seriously damage the court.

Chief Justice Marshall knew that he had to consider not only the Judiciary Act of 1789 but also Article III, Section 2, of the Constitution itself (see quotes). Practically speaking, however, the problem was whether the court should risk taking a stand that would be challenged by the Republicans.

> In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.
> --Article III, Section 2, U.S. Constitution

> The Supreme Court...shall have power to issue...writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States.
> --Judiciary Act of 1789

What would happen if the court issued a ruling that the Jefferson administration refused to obey? Could the court survive such damage to its prestige? Regardless of the merits of Marbury's request, would it be better to protect the court by avoiding a direct clash? Clearly, the Chief Justice faced a hard decision. He had to decide which was more important: upholding a man's rights or the survival of the court.

Questions for Discussion

1. How would you interpret, in your own words, the Judiciary Act of 1789? How would you interpret Article III, Section 2, of the Constitution? Do you think that the phrase "other public ministers" refers only to foreign diplomatic officials or to a broad category of public officials, domestic as well as foreign, including the justices of the peace in Marbury v. Madison?

2. What conflict, if any, do you see between Article III, Section 2, of the Constitution and the Judiciary Act of 1789? If you believe that conflict exists, how would you resolve it?

SUPREME COURT DECISION AND REASONING

John Marshall very carefully analyzed the case in terms of three questions. First, did Marbury have a legal right to his commission as a justice of the peace? Yes. Second, if he had a right, and that right had been violated, was there a legal remedy? Yes. Third, could the Supreme Court decree the proper remedy, a writ of mandamus? No.

To reach this conclusion, the Chief Justice first declared the court's right to interpret laws: "It is emphatically the province...of the judicial department to say what the law is." Then he interpreted Article III, Section 2, of the Constitution in a narrow, literal way. He said that Section 2 granted the Supreme Court original jurisdiction only in those instances expressly listed. The writ of mandamus was not among them. Therefore, the attempt by the Judiciary Act of 1789 to extend the court's original jurisdiction to include such a writ stood in direct conflict with the Constitution itself. The statute was therefore of no effect.

"Certainly," stated Marshall, "all those who have framed written constitutions contemplate them as forming the fundamental and (supreme) law of the nation, and consequently the theory of every such government must be that an act of the legislature repugnant to the constitution is void."

He reasoned that the Constitution was superior and paramount law, not to be changed by ordinary means. It was not to be considered "on a level with ordinary legislative acts and, like other acts, (changeable) when the legislature shall please..."

Questions for Discussion

Again read Article III, Section 2, of the Constitution. Study the reasoning of the court as presented above. What new power did the court create? Explain your answer.

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JUDICIAL REVIEW AND SEPARATION OF POWERS

Birth of Judicial Review

Thus, the Federalist Chief Justice had neatly sidestepped his political dilemma. By not issuing the writ requested by the Federalist Marbury, he had given the Republicans the final result they sought. And in doing that, he even limited the original jurisdiction of his court. Far more important, however, this bold and able jurist had managed to lay down--gently, permanently, irrefutably--the very cornerstone of the Supreme Court's great powers.

This cornerstone is called "judicial review." It includes the court's authority to interpret the Constitution. It includes the authority to apply a statute and to decide whether it violates the Constitution.

Using the concept of judicial review, Chief Justice Marshall and his nationalistic court, in decision after decision, staked out ever-broader boundaries of federal power. In Fletcher v. Peck (1810), he held that the Supreme Court could declare a state statute unconstitutional. In Cohens v. Virginia (1821), he held that the high bench could overturn the rulings of state courts involving federal questions. These cases, as well as Marbury, reflected the "Supremacy Clause" of the Constitution.

Separation of Powers

The concept of judicial review was a logical extension of our constitutional system based on "separation of powers." The makers of the Constitution gave the power to make laws to the legislative branch of the federal government; the power to administer the laws, to the executive branch; and the power to adjudicate, to the judicial branch. "All legislative powers herein granted shall be vested in a Congress of the United States," says Article I of the Constitution. "The executive power shall be vested in a President of the United States of America," says Article II. "The judicial power of the United States," says Article III, "shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." The founding fathers purposely built a system on "separation of powers" because history and their colonial experience had taught them to fear a strong, centralized government. They aimed to prevent the same officials from making the laws, carrying them out, and judging their meaning. They did not want the President of the United States to dominate the legislative or the judicial branches. Nor did they want either of those branches to dominate the President in the legitimate pursuit of his constitutional powers and duties.

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The Constitution did not specifically state that the Supreme Court had the final authority to declare acts of the other federal branches, as well as of state governments, unconstitutional. Rather, it was reasoned interpretation of the Marshall Court that began the concept of judicial review which has become so fundamental to our entire legal structure today.

Limitations on Review

The power of judicial review was not without limits. The Supreme Court could not pick any law out of the air and determine its constitutionality. Rather, the law would have to come before the court in a "case or controversy." That is, the case must have been properly brought into court by persons having a legal interest in the matter.

Over the years, some members of the Supreme Court developed still another limitation: the theory of "judicial restraint." Their view was that courts ought to defer to a legislature's decision--as long as it was not unreasonable--in fixing the boundaries of personal freedom. After all, according to this theory, elected representatives are closer to the people than are Supreme Court justices. Therefore they should be more perceptive in balancing the competing interests of society in a given conflict; for example, balancing the rights of demonstrators to free speech and assembly with the community's right to unobstructed motor traffic within its boundaries.

It was John Marshall who, more than any other person, established the Supreme Court securely as a tribunal of final review. President John Adams, the man who appointed him Chief Justice, would say: "My gift of John Marshall to the people of the United States was the proudest act of my life." Supreme Court justices, down through the years, would refer to him as the "great Chief."

Questions for Discussion

1. Define judicial review.

2. To what extent can the court use the power of judicial review?

3. How does judicial review strengthen or weaken the concept of separation of powers? Explain.

4. Define judicial restraint.

THE DEVIL AND CHIEF JUSTICE MARSHALL

Cast of Characters:

John Marshall, Chief Justice of the Supreme Court of the United States--an intelligent, good-natured man, age 45. Tall, straight, and slender.

Polly Marshall, his wife. A lovely woman in her late thirties, Polly displays the dignity and good manners of her social class, but she is not very knowledgeable about politics and world affairs.

The Devil. As personified in this play, the Devil is not exactly an evil character; rather, he represents the more predatory aspects of human behavior. His motto: "If You Want Something, Take It!" Lust for absolute power and authority are his motivating forces.

Clerk of the Supreme Court. An individual with a commanding voice to call the court to session.

Time: February 20, 1803; early evening.

Place: The Virginia mansion of Chief Justice and Mrs. Marshall.

Scene 1

The Chief Justice and his wife are having coffee in the drawing room. The Chief Justice is silent and brooding. His wife is concerned by his silence.

MRS. M.: Is something troubling you, John?

CHIEF: (To himself) If I refuse to consider the case, they'll say the court has no power; on the other hand...

MRS M.: John!

CHIEF: Oh, I'm sorry, my dear. Were you speaking to me?

MRS. M.: I asked if there was something wrong.

CHIEF: Yes, there is. But I'm afraid you can't help this time.

MRS. M.: It's the Marbury case, isn't it?

CHIEF: Yes. And my ruling will determine how much power the Supreme Court has over Congress and the President.

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MRS. M.: I think the court should take all of the power it can get.

CHIEF: I know you do. But the court cannot do things that are forbidden by the Constitution. The court can't tell the other branches what to do unless the Constitution says we can.

MRS. M.: Well, then, read the Constitution and see what it says about your problem.

CHIEF: I know perfectly well what the Constitution says--I've read it many times. I'm worried about what it means, not what it says.

MRS. M.: I don't understand. Doesn't the Constitution say what it means?

CHIEF: Not entirely. The Constitution says the Supreme Court is to be mainly an appeals court. In other words, people can't just walk into our court and ask for a decision. They must start out in a lower court; then, if they lose, they can try to appeal from the lower court to our court. But, the Constitution also says that a couple of special kinds of cases can start out in the Supreme Court. So, we handle not only appeals cases, but a few original cases, as well.

MRS. M.: I still don't see the problem.

CHIEF: (patiently) I'm coming to that. You see, Congress passed a law saying that more cases can start out in the Supreme Court, cases other than those in which the Constitution gives us original jurisdiction. So now, Marbury has brought this case against James Madison to our court.

MRS. M.: Oh yes. Mr. Madison is Secretary of State to President Jefferson, isn't he? Such an intelligent young man. I suspect that he'll be President one day. Why on earth would this Marbury person want to sue him?

CHIEF: It has a great deal to do with politics, my dear. The Federalists appointed Mr. Marbury to be a justice of the peace in 1801, just before they had to turn the government over to President Jefferson and the Republicans. Mr. Marbury's appointment had been approved and all of his papers were in order. But the Republicans refused to let him take office.

MRS. M.: But that's wrong, John. If his papers were in order and the appointment was legal, he has a right to the office.

CHIEF: I agree with you. But the legal issue that bothers me is whether Marbury's case can start out in our court.

MRS. M.: Didn't you say that Congress passed a law allowing cases like this to start in the Supreme Court?

CHIEF: Yes, I did. But I also said that the Constitution states the types of cases that can start in the Supreme Court. Marbury's case is not one of them.

MRS. M.: In other words, Congress has passed a law that changes the Constitution.

CHIEF: It looks that way.

MRS. M.: Then why doesn't the Supreme Court just throw out the law if the law is against the Constitution?

CHIEF: The Constitution doesn't say that the courts can throw out laws passed by Congress.

MRS. M.: Well, what does it say?

CHIEF: That is the problem. It doesn't say anything definite one way or the other on this.

MRS. M.: I'm afraid the entire matter is too complicated for me. (she rises) It's getting late, John, and I'm very tired.

CHIEF: You go on to bed. I won't be able to sleep until I work this out. I'll take my coffee into the study and close the door so I won't disturb you with my mumbling.

MRS. M.: Good night, then. I wish you luck in finding the solution.

CHIEF: I'll need it. Good night. And thank you.

(Mrs. Marshall leaves the room. The Chief Justice rises and goes into his study.)

Scene II

Chief Justice Marshall is seated at a large, cluttered desk in his study. The room is dimly lit by a reading lamp on the desk. Law books line the walls. The chief Justice works with his back to double doors that lead to an outside porch. There is an easy chair next to the double doors. The Devil, in the guise of a lean, thirtyish colonial gentleman, is sitting in the easy chair.

DEVIL: All you have to do is take it.

CHIEF: (turning in his chair) Sir, what is your business here? This is an inappropriate hour for visits by strangers.

DEVIL: On the contrary, my good Chief Justice. This is a very appropriate hour for my visit. I try to make all my visits at the appropriate hour. You are not sure how to handle the Marbury case. I thought I might be able to help you with it.

CHIEF: You are impertinent, sir. Mine is a court from which there is no appeal. We of the Supreme Court do our own work. We seek the help of no man. But I have endured your presence too long--I must ask you to leave.

DEVIL: I am not a man.

CHIEF: What's that?

DEVIL: You said you do not seek the help of any man. I am not a man. (The Devil pulls out a small pair of scissors and begins manicuring his nails.)

CHIEF: Enough of this! Out with you now.

DEVIL: Before I first spoke, you were thinking about your oath and whether it had anything to do with the Marbury case.

CHIEF: (quickly) How did you know that? (pauses) I must have been thinking out loud.

DEVIL: Just before you started thinking about the oath, you asked yourself whether it was important that the Constitution is written.

CHIEF: (aside) Incredible. I must be seeing things. Perhaps I am working too hard. (to Devil) Bring your chair closer, then. (The Devil brings chair closer, then resumes his manicuring. Now that the Devil is in brighter light, the Chief Justice studies him closely.) I do not recognize you. I insist that you tell me who you are.

DEVIL: I am glad to oblige, Mr. Chief Justice. People have given me many names, but since I am calling you by your formal title, "Mr. Chief Justice," perhaps you ought to call me "Prince of Darkness"--my formal title.

CHIEF: (laughs heartily) We Americans dislike titles of nobility. I shall call you "Mr. Chief Devil." Does that suit you?

DEVIL: (smiling) Yes, of course. You people had a bad experience with nobility a few years back, didn't you? It slipped my mind for a moment.

CHIEF: So you are here to give me advice on the Marbury case. Very well, then, let's have it.

DEVIL: You are wondering whether your court has the power to throw out an Act of Congress which conflicts with the Constitution. Why worry about whether you can do it? Just do it. Do you want the power for the court? As I said at the beginning, all you have to do is take it.

CHIEF: I am beginning to understand why you are here. You want me to disregard the Constitution. Very well. Try and convince me to do that. I know you have no power over my mind, or you would not be wasting your time trying to convince me.

DEVIL: Quite true. You have an alert mind, Mr. Chief Justice, and I have no power over it--except, of course, the power of my ideas. I hope to convince you quickly; there are many demands on my time.

CHIEF: No doubt, Mr. Chief Devil. This may take a while, though. I am not an easy man to convince.

DEVIL: But it is really very simple. You want the power--just take it. Throw out the law.

CHIEF: If it is all right for the Court to take new power whenever it wants to, why isn't it all right for the Congress and the President to do the same thing?

DEVIL: Surely you realize, Mr. Chief Justice, that Congress controls the money, and the President commands the armed forces. So those two branches already have a great deal of power. They don't need any more power. Your branch needs more power to catch up with the others. All you have to do is take it.

CHIEF: The Constitution gives the purse to Congress, and the sword to the President. So why shouldn't the court have to look to the Constitution for its powers, too?

DEVIL: Because the Constitution does not give you the power to throw out an Act of Congress. You said as much to Mrs. Marshall before she went to bed.

CHIEF: I beg to differ with you, Mr. Chief Devil. What I told her was that the Constitution does not say anything definite on this question. That doesn't mean we should give up on the Constitution. The next step is to look it over carefully to see whether anything in it can be interpreted in a way that would solve the problem. Courts often interpret the Constitution and other laws to find out whether they fit a particular case. In fact, this is one of the biggest jobs that courts have.

DEVIL: But your court needs power, and the Constitution does not give it to you. So you must take it.

CHIEF: When I became Chief Justice, I took an oath to support the Constitution. The Constitution itself requires that this oath be taken. If in this Marbury case I uphold an Act of Congress that is in conflict with the Constitution, am I not violating my oath to support the Constitution?

DEVIL: The Constitution says that the President and the members of Congress have to take the same oath. If you can rely on the oath, so can they--unless you don't think they can be trusted to live up to their oath.

CHIEF: No, no. I trust them. I just think Congress exceeded its powers in passing a law that conflicts with the Constitution.

DEVIL: But who's to decide whether Congress exceeded its powers? That's the problem, isn't it?

CHIEF: Exactly. (Rises and begins pacing around the room) The question is, who's to decide? The Constitution says the judicial power--which means the power that the courts have--extends to cases arising under the Constitution and the other laws. Well, this Marbury case is about the Constitution and an Act of Congress--a law. So the court has the power to decide the case. And if the court can decide the case, why can't it decide against Congress?

DEVIL: Congress might not listen to your decision. They might get mad and try to kick the judges out. What would you do then?

CHIEF: A minute ago I thought you said that all the court had to do was take the power.

DEVIL: (smiling) I said you could take the power. I never said that someone else wouldn't try to take it back.

CHIEF: But if the Constitution gives us the power, nobody else has the right to take it away.

DEVIL: But the other branches have money and soldiers. They might take your power away even though the Constitution says it is wrong to do it. They might not care about the Constitution.

CHIEF: Congress and the President represent the people. If the people let Congress or the President--or the court, for that matter--forget about the Constitution, then the Constitution will be forgotten. But I'm betting that the people will not let that happen. That is the only bet I can make.

DEVIL: The people are beasts. They don't care. You judges should protect yourselves--don't expect the people to do it for you.

CHIEF: Maybe you are right that people look out only for themselves. Still, they might think they are better off with the Constitution than without it.

DEVIL: Why?

CHIEF: Because it keeps the government from getting too much power, and it helps to make the government use its power fairly. (It is getting light outside. The lamp on the desk has burned down.) Mr. Chief Devil, we have talked through the night. It is too bad you already have a profession--you would make a good lawyer. I think our conversation has helped me. Does that make you happy?

DEVIL: That depends on how you decide the Marbury case, and on what happens after your decision.

CHIEF: Yes. Well, I shall try not to keep you waiting too long for the decision part. It may take longer to see what happens.

DEVIL: I have all the time in the world. Good-bye, Mr. Chief Justice. (Devil bows and exits through double doors.)

CHIEF: Good-bye, Mr. Chief Devil.

Scene 3

MRS. M.: (knocks at the door of the study) John, are you in there?

CHIEF: (opens the door) Yes, of course, I'm here. Where did you think I would be?

MRS. M.: I wasn't sure. When I woke up and saw that it was morning and you had not been to bed, I got worried. I came downstairs and heard voices in the study. I'm sure I heard the door slam.

CHIEF: Voices? Oh yes. Well, you might say that I was thinking out loud about something.

MRS. M.: Aren't you terribly tired?

CHIEF: Not really. And I have figured out what to do about the Marbury case. I think that's worth a night's sleep. Come now, let's have breakfast.

Scene 4

It is four days later--February 24, 1803. The scene is the small courtroom of the U.S. Supreme Court. The gallery is packed. A door opens and the justices file into their places on the bench.

CLERK: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States. Oyez, oyez, oyez. All persons having business before the Honorable, the Supreme Court of the United States, are admonished to draw near and give their attention, for the court is now sitting. God save the United States and his honorable court. (Justices sit, with the Chief Justice in the middle.)

CHIEF: I have, for announcement, the opinion and judgment of the Court in the case of Marbury versus Madison. (begins to read) At the last term,

19. PRELUDE TO THE TRAIL OF TEARS:
WORCESTER V. GEORGIA (1832)

Introduction:

The momentum of the westward movement and the popular support for Indian resettlement pitted white against Indian, states' rights against the federal government, and the Supreme Court against the administration of President Andrew Jackson. These issues came together in the Worcester case, which affirmed the sovereignty of the Cherokee Nation but was not enforced. This case study examines the legal issues and tragic consequences of Indian resettlement. For advanced students, materials for a Supreme Court simulation are provided. The activity can be used when studying the administration of Andrew Jackson or the westward movement. Note that Activities 23 and 36 also deal with legal issues related to the American Indian.

Objectives:

1. To provide student examination of the legal, political, and cultural issues involved in Indian resettlement in the 1800s.

2. To develop an awareness of the status of Indian tribes in relation to federal and state government.

3. To enhance critical thinking skills.

Level: Grade 8 and above

Time: One class period

Materials: Copies of Handouts 19-1 through 19-6 for all students

Procedure:

1. As an introduction, ask students to make a list of reasons why Indians might want to stay on their lands and another list of reasons why white settlers might want the Indians removed.

2. Pass out Handout 19-1. Have students read and discuss the handout, comparing the reasons for and against resettlement provided in the materials with the lists they generated.

3. Pass out Handout 19-2. Have students read and discuss the case. Make sure students understand Worcester's reasoning. (NOTE: At this point, teachers of advanced classes may wish to conduct a simulated Supreme Court hearing. Directions are provided below.)

4. Ask students to vote on how they think the Supreme Court decided the case.

5. Pass out Handout 19-3. Read and discuss the decision.

To conduct the simulation:

1. After discussing Handout 19-2, tell students they will be enacting the Supreme Court hearing of the case. Pass out handout 19-4 and review steps in a Supreme Court hearing.

2. Assign seven students to take the roles of the Supreme Court justices. Cut apart the role profiles of the justices on Handout 19-5 and distribute. Have justices read roles and prepare questions to ask attorneys. Assign one student to be the court officer.

3. Divide the rest of the class into groups of two to three. Have half of the groups prepare arguments for Worcester and the other half prepare arguments for Georgia; allow 15 minutes. Depending on students' level, either distribute Handout 19-6 to the students or use it to assist groups in preparing their arguments. Tell students that only one group of attorneys from each side will be selected to argue before the Supreme Court.

4. Select one group from each side to argue before the court. You may ask for volunteers, select groups at your discretion, or assign a number to each group and have a drawing to select the groups.

5. Conduct the hearing. After arguments, have the court deliberate fish-bowl style or allow them to recess.

6. Have the court deliver its decision.

7. Distribute Handout 19-3 and compare the actual decision with the students' decision. Discuss the aftermath of the historical decision and the questions on the handout.

INDIAN RESETTLEMENT

As the frontier moved west, white settlers wanted to expand into territory that was the ancestral land of many Indian tribes. During the administration of Andrew Jackson, the government supported the policy of resettlement. They persuaded many tribes to give up their claim to their land and move into areas set aside by Congress as Indian territory. In 1830 Congress passed the Indian Resettlement Act, which provided for the removal of Indians to territory west of the Mississippi River. While Jackson was President, the government negotiated 94 treaties to end Indian titles to land in the existing states.

Many tribes resisted this policy. Wars were fought as a result. The Sac and Fox Indians in Wisconsin and Illinois reoccupied their lands after having been forced to move west of the Mississippi. They were defeated. The Seminole Indians refused to sign a treaty to give up their lands. They, too, fought and lost a bitter war to remain on their land.

The Cherokees of Georgia were another tribe that resisted. They did not want to give up their way of life. The Cherokee governed themselves under a written constitution. Their agriculture was prospering. They developed a written language and published a widely read newspaper in Cherokee. They had their own schools. They did not want to sign the resettlement treaty.

Cherokee leaders explained their point of view in the following statement, which appeared on August 21, 1830, in the "Riles Weekly Register":

> We wish to remain on the land of our fathers. We have a perfect and original right to remain without interruption... If we are compelled to leave our country, we see nothing but ruin before us. The country west of the Arkansas territory is unknown to us. From what we can learn...the inviting parts of it...are preoccupied by various Indian nations, to which it has been assigned. They would regard us as intruders, and look upon us with an evil eye. The far greater part of that region is, beyond all controversy, badly supplied with wood and water; and no Indian tribe can live as agriculturalists without these articles. All our neighbors, in case of our removal, though crowded into our near vicinity, would speak a language totally different from ours, and practice different customs. The original possessors of that region are now wandering savages lurking for prey in the neighborhood. They have always been at war, and would be easily tempted to turn their arms against peaceful emigrants. Were the country to which we are urged much better than it is represented to be, and were it free from the objections we have made to it, still it is not the land of our birth, nor of our affections. It contains neither the scenes of our childhood, nor the graves of our fathers.

Questions for Discussion

1. What arguments did the Cherokee leaders give against resettlement? Are they convincing?

2. Jackson and others who supported resettlement justified their point of view with the argument that Indians would be better off in territory far away from whites. Then they could have the choice to keep their own way of life or adapt to the ways of whites. Do you think this was a convincing argument in the case of the Cherokees, who had already taken on many of the white culture's ways?

3. Do you think the resettlement policy was justified for tribes that had not adapted to the white culture or that were warring against whites?

4. Gold was discovered in Georgia. How might this have affected the white settlers' attitude toward resettlement?

WORCESTER V. GEORGIA (1832)

During this period of Indian resettlement, the question of whether Indians had a right to their land came to a head in the case of Worcester v. Georgia.

The federal government had signed treaties with many Indian tribes, including the Cherokees of Georgia, which recognized tribes as sovereign nations and granted them the right to keep their ancestral lands. However, states like Georgia wanted to control Indian lands and supported Indian resettlement.

In 1831 Samuel Worcester, a Christian minister from Vermont, went to Cherokee territory in Georgia to preach and to translate the Bible into the Cherokee language. The Georgia legislature had passed a state law that required any white person going onto Indian lands to get a license. Georgia lawmakers wanted to keep out people who might stir up the Cherokees against the state.

Georgia officials arrested Worcester, saying he had broken the state law. Worcester was brought to trial in the Georgia court, found guilty, and sentenced to four years in prison. Worcester thought the Georgia court was wrong and appealed his case to the U.S. Supreme Court.

Worcester argued that the state of Georgia had no power to make laws concerning the Cherokee tribe. He said that his visit to Cherokee land had been allowed under federal law because the United States had made treaties with the Cherokees that recognized them as an independent nation. The treaties were federal law, and they were higher than state law.

The Supreme Court had to decide whether the state law went against the provisions of the Constitution. Article VI of the Constitution says:

> ...this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land, and the judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary not withstanding...

Questions for Discussion

1. According to Article VI, which law is higher, state or federal law? Are treaties considered federal law?

2. Restate the reasoning in Worcester's argument. Is it convincing?

3. How would you decide the case--in favor of Georgia and the state law requiring a license, or in favor of Worcester and the federal treaty which is above state law?

DECISION: WORCESTER V. GEORGIA

The Supreme Court decided in favor of Worcester. John Marshall, the Chief Justice, wrote the opinion of the court. It said that the Cherokee nation was an independent community, established by federal treaty. Only the federal government could deal with the Cherokee nation. The state of Georgia could not pass laws affecting the Cherokee.

Aftermath

The Supreme Court had made an important decision on the legal status of Indian tribes. What the Supreme Court says *should* be the law of the land, but the court has no power to enforce the law. It is up to the President to do that.

However, President Jackson did not agree with the court's decision. He is reported to have said, "John Marshall has made his decision; now let him enforce it."

The state of Georgia wanted the Cherokees out and sent in the state militia to force them out of their homes. Jackson did nothing to stop it. The Cherokees were marched to Indian territory in what is now the state of Oklahoma.

Many thousands suffered and died on this march, which became known as the "trail of tears."

In his farewell address to Congress in 1837, Jackson said the following:

> The States which had so long been retarded in their improvement by the Indian tribes residing in the midst of them are... relieved of the evil; and this unhappy race--the original dwellers in our land--are now placed in a situation where we may well hope that they will share in the blessings of civilization and be saved from that degradation and destruction to which they were rapidly hastening while they remained in the States.

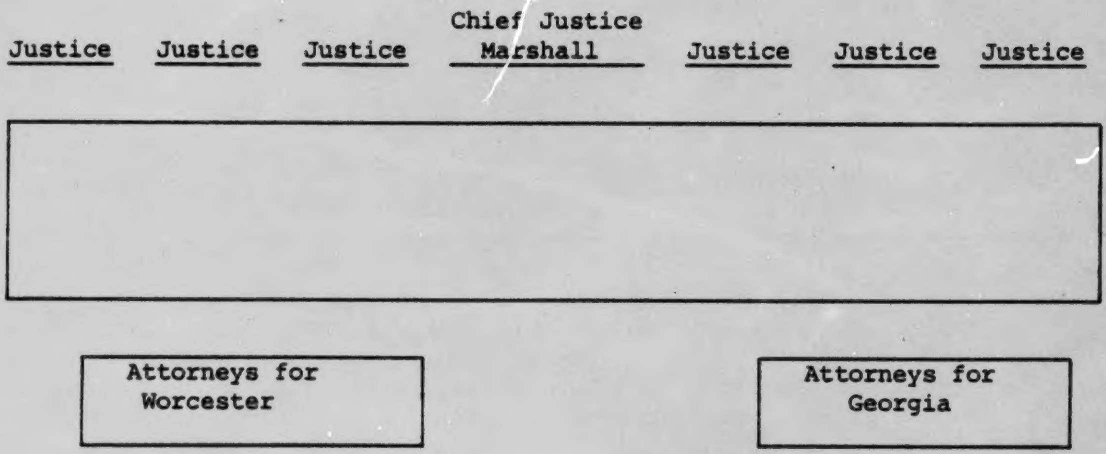
Questions for Discussion

1. What are the political and legal consequences of the executive branch's refusal to carry out a ruling of the judiciary?

2. To what part of Jackson's farewell address would the Cherokees object most?

INSTRUCTION FOR SUPREME COURT SIMULATION

Courtroom Layout



1. Opening of the court by the court officer. Court officer orders all to stand until justices enter and are seated and calls the court to order by saying: "Oyez, oyez, oyez. All persons having business before the Honorable Supreme Court of the United States are invited to draw near and give their attention, for the court is now sitting."

2. Chief Justice asks: "Are all persons connected with this case prepared for the hearing? Are the attorneys for Worcester present? Are the attorneys for Georgia present?"

3. Arguments for Worcester. Chief Justice asks Worcester's attorneys to give their arguments (five to ten minutes).

4. Arguments for Georgia. Chief Justice asks Georgia's attorneys to give their arguments (five to ten minutes).

5. Rebuttal. Chief Justice gives Worcester an opportunity for rebuttal (three to five minutes). At any time during the hearing, the justices may question attorneys. After the rebuttal, they may further question attorneys.

6. Deliberation by justices. Justices will discuss arguments and make a decision. There may be majority and dissenting opinions. The Chief Justice should write down key reasons for the majority decision and a spokesperson for the dissent (if there is one) should do the same.

7. Statement of opinion by justices. The Chief Justice will deliver the majority opinion and spokesperson for the dissent will deliver that opinion.

ROLE PROFILES FOR SUPREME COURT SIMULATION
Worcester v. Georgia (1832)

SUPREME COURT JUSTICES

- John Marshall, Chief Justice
- Henry Baldwin
- John McLean
- Smith Thompson
- Gabriel Duval
- Joseph Storey
- William Johnson

JOHN MARSHALL, CHIEF JUSTICE

John Adams, who appointed Marshall to the Supreme Court, said: "My gift of John Marshall to the people of the United States was the proudest act of my life." Marshall was responsible for establishing the court as the tribunal of final review and introducing the doctrine of judicial review to the American constitutional system. He wrote more than 500 decisions during his long term on the bench. When he died in 1835, the Liberty Bell cracked when it was tolling during the mourning period.

HENRY BALDWIN

From Connecticut, he was appointed to the Supreme Court by Andrew Jackson. He had an erratic career on the bench. Early in his career, he supported Marshall's liberal interpretation of the Constitution, but later he refused to embrace either strict or broad construction of the Constitution. He did not get along well with other members of the court and was not trusted by them.

JOHN MCLEAN

From New Jersey, he was appointed to the court by Andrew Jackson. His most famous opinion was his dissent in Dred Scott v. Sanford, in which he held that freed slaves were indeed citizens and had a right to bring lawsuits before federal courts. His views were eventually reflected in the Fourteenth Amendment. Because of his presidential ambitions, he flirted with both political parties.

SMITH THOMPSON

Before being appointed to the Supreme Court by Monroe, he was Secretary of the Navy. He began to pull away from the strong nationalism of Chief Justice Marshall to support the rights of states. His most notable opinion was in *Kendall v. U.S.* (1838), in which he argued against President Jackson that the executive branch was not exempt from judicial control.

GABRIEL DUVAL

He was the first comptroller of the treasury under Jefferson before his appointment to the Court by James Madison. During his 23 years on the bench, he generally voted with John Marshall.

JOSEPH STOREY

He was from Massachusetts and was appointed to the court by James Madison. He was a supporter of higher learning for women and helped establish Harvard Law School. He rarely disagreed with the strong nationalism of Marshall. An 1816 opinion Storey wrote established the appellate supremacy of the Supreme Court over state courts in civil cases involving federal statutes and treaties.

WILLIAM JOHNSON

He was the most independent justice on the Marshall court and fought against the powerful Marshall. He was called the first great court dissenter and eventually succeeded in establishing dissenting opinions as accepted court practice.

SAMPLE ARGUMENTS FOR SUPREME COURT SIMULATION

Argument for Worcester

The Cherokee nation was recognized by a treaty between the tribe and the federal government. Since Article VI states that treaties shall be the supreme law of the land, the Cherokee treaty should be considered to be above state law.

The State of Georgia therefore cannot pass laws that affect the Cherokee nation in any way.

Therefore, the state law requiring a license for a visitor on Cherokee lands goes against Article VI of the Constitution.

Argument for Georgia

Since the Cherokee nation is within the borders of Georgia, the state has an interest in maintaining peaceful relations between the tribe and the state. The license requirement is simply a means of insuring the peace. It does not interfere with the internal affairs of the Cherokee nation.

The state of Georgia has the authority to pass laws such as the license requirement. Nowhere in the Constitution are states prohibited from passing such laws. Article X also states that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States..."

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SECTION III

CIVIL WAR THROUGH INDUSTRIALIZATION

20. SLAVERY AND THE LAW:
FROM INDENTURED SERVITUDE TO DRED SCOTT

Introduction:

The two case studies presented in this activity focus on the legal status of black indentured servants and slaves from the colonial period to the eve of the Civil War. This detailed look at the cases of two men, John Punch and Dred Scott, allows students to reflect on the inhumanity of slavery and the reasons for its existence before and after the writing of the Declaration of Independence and the Constitution. This activity can be used when studying the causes of the Civil War. Different versions of the Dred Scott case are provided for use at grades 8 and 11. A simulation on the adversary model is also suggested for use with high school students.

Objectives:

1. To develop understanding of the roots of slavery in colonial America.

2. To develop knowledge of the legal status of blacks from the colonial period to the Civil War.

3. To increase awareness of the legal necessity for the Thirteenth and Fourteenth Amendments.

Level: Grades 8 and 11

Time: One to two class periods

Materials: Handouts 20-1 and 20-2a (Grade 8) or 20-1, 20-2b, 20-3, and 20-4 (grade 11) for all students

Procedure:

1. Distribute Handout 20-1. Have students read the introductory material and case. Discuss the questions.

2. Distribute Handout 20-2a (for grade 8) or 20-2b (for grade 11). Read the case, asking students to identify the important facts, issues, and arguments in the case. Discuss the questions. (NOTE: Grade 11 teachers may at this point wish to conduct the simulation as described below.)

3. As a follow-up, have students write "letters to the editor" describing their views on the Scott decision.

To conduct the simulation:

1. After discussing Handout 20-2b, divide the class into groups of three. Within each group, assign one student to be a Supreme Court justice, one the attorney for Dred Scott, and one the attorney for Sanford.

2. Allow five minutes for the attorneys to prepare. You may distribute Handout 20-3 to all students to assist them in their preparation or may use it only as a guide in the discussion preceding the simulation. Scott's attorneys should argue first, followed by Sanford's attorneys. The justice will then deliberate and render a decision.

3. Have the groups enact the simulation simultaneously. (Make sure groups are spaced far enough apart to minimize distractions.)

4. Ask the justices to announce their decisions and give their reasoning. Record the decisions on the board.

5. Distribute Handout 20-4. Read and discuss the Supreme Court decision, examining how it is alike or different from the student justices' opinions. Ask students why the case became "another cause of the Civil War."

FROM INDENTURED SERVITUDE TO SLAVERY

During the colonial period, even before the Mayflower landed at Plymouth Rock, black Africans were brought to the New World. For more than 200 years, hundreds of thousands of Africans were purchased by slave traders and brought to America by force. At first, they became indentured servants, which means that they worked for an owner for a number of years and then were set free.

Some black indentured servants earned their freedom and became owners of land in the early colonies. A few owned hundreds of acres of land and had servants of their own. Many indentured blacks, however, became slaves. Some blacks were being held by their owners for life as early as 1640. They were not able to win their freedom in the courts. Others were forced to serve added time because of laws they had broken. This was done as a punishment for running away from their masters.

Two cases, which span a period of almost 200 years, show how the courts interpreted the status of two black men--John Punch and the well-known Dred Scott.

The Case of John Punch and James Gregory (1640)

James Gregory and John Punch were servants of Hugh Gwyn. Punch was a black man; James Gregory was a white "Scotchman." They worked on their master's plantation in Virginia. In the summer of 1640 they ran away together to Maryland. Their master wanted to capture them and sell them in Maryland. He had no use for servants who ran away. They might run away again.

The colonial government of Virginia said no. It ordered Hugh Gwyn to go to Maryland, capture his servants, and bring them back to Virginia. The government wanted to punish these runaways and make examples of them. Runaway servants were a big problem in colonial Virginia.

The General Court of Virginia heard the cases of James Gregory and John Punch. The court ruled that both were guilty. It ordered 30 lashes for each man. Each had time added to his term of indenture. James Gregory had to serve his master one extra year. He also had to serve the colony for three years when he had finished serving his master. His punishment was harsh. Four years of extra service was a lot. But the punishment of John Punch, the black servant, was much worse. He was sentenced to serve his master for life!

Adapted from Law in a New Land (Boston: Houghton-Mifflin Co., 1972). Used with permission.

Questions for Discussion

1. Why do you think John Punch was punished more severely than James Gregory? Was his offense any worse than Gregory's?

2. Why was it possible for colonial courts to punish blacks more harshly than whites? Would it be possible today in America? Why?

3. How did cases like that of John Punch help bring about slavery in America?

Freedom for Americans--Except Blacks

John Punch was made a slave by the court of Virginia. He became his master's property for life. Cases like that of John Punch show how black people were changed from indentured servants to slaves. Soon the laws of Virginia began making all blacks slaves. After 1670, all new blacks brought to the colony by ship were made slaves. After 1682, all new blacks--even those who came by land--became slaves in Virginia.

Such slave laws spread throughout the colonies. Slavery was common by the time of the American Revolution. Southern landowners and businessmen made money by buying, shipping, and selling slaves. The men who signed the Declaration of Independence all knew about slavery. In fact, some of them owned slaves. Others were against slavery.

The man chosen to write the Declaration of Independence in 1776 was Thomas Jefferson of Virginia. He later became our third President. In the Declaration, he wrote that all men have the right to be free. But the Founding Fathers did not believe this applied to slaves.

Jefferson was one who owned slaves. He had some doubts about slavery, however. He felt the slave trade was wrong. But the Declaration of Independence, a proud statement of freedom, did not speak out against slavery itself. It said nothing against a white man's owning a black man.

In 1787, the U.S. Constitution went even further. The new nation's basic set of laws did not mention "slaves" or "slavery" by name, but the subject came up in three places. Each time, the Constitution accepted the idea of slavery.

In the mid-1800s, slavery became an issue which was to lead to civil war. One slave, Dred Scott, took his fight against slavery all the way to the Supreme Court.

THE DRED SCOTT CASE

Dred Scott was a black man. He was born in the Southern state of Virginia. His parents were slaves. They were owned by another person, a white man. Dred Scott, too, was the man's slave. The laws of Virginia said that all the children of slaves were also slaves.

When his master, or owner, moved to Missouri, Dred Scott went with him. The slave had no choice. He had to go wherever and do whatever his owner wanted. In Missouri--as in Virginia--it was not against the law to own slaves. Missouri was a "slave state."

Later, Dred Scott was sold to another man. The next owner, a doctor, took his slave to Illinois. In this Northern state, it was against the law to own slaves. Illinois was a "free state." The doctor and Dred Scott lived here for three years. Then they moved for a year to a "free" territory in the North. Finally, the doctor returned to Missouri, bringing his slave with him.

After the doctor died, Dred Scott's new owners tried to help him win his freedom. Of course, they could have freed him themselves. But they hated slavery--that is, the owning of slaves. They wanted to attack the laws that made slavery possible. So they helped Dred Scott take his case to court. In court they said the slave had lived in a "free" territory, where slavery was against the law. They argued this had made him a free man.

Dred Scott's court battle lasted 11 years. He went from one court to another. Finally, in 1857, the case came before the U.S. Supreme Court.

The Supreme Court ruled against Dred Scott. It said that he was a slave. Chief Justice Roger B. Taney said that slaves were not citizens of the United States so they could not ask federal courts to free them. And, said Taney, Dred Scott was not freed by moving, for a time, with his master to a "free" territory.

Questions for Discussion

1. Why did Dred Scott's new owners take his case to court to win his freedom rather than just freeing him themselves?

2. What was the Supreme Court's decision in the Dred Scott case? According to Chief Justice Taney, could slaves ever be free? Who could free them?

3. Slave families were often separated by a sale. Husband and wife, sometimes even mother and child, might be sold to different owners. How would such a child feel?

DRED SCOTT V. SANFORD (1857)

Dred Scott was a slightly built, rather sickly black slave who belonged to Dr. Emerson, a U.S. Army doctor who was stationed in Missouri. In 1834 Dr. Emerson was transferred to a military post in Illinois, where slavery was against state law. Dr. Emerson took Dred Scott with him, and they lived there two years. Then, Dr. Emerson was transferred to Fort Snelling in what is now Minnesota; that was north of the line where Congress in 1820 had said slavery was illegal. Almost three years later, Dr. Emerson went back to Missouri, taking Dred Scott with him.

In 1846, Scott sued for his freedom in a Missouri state court, saying that he thought that his life for several years in a free state or free territory made him a free man and a citizen. He won his case, but the Missouri Supreme Court changed the decision and said he was still a slave. By this time Dr. Emerson had died, and friends of Dred Scott who hated slavery decided to help Scott and also strike a blow against slavery. They arranged for Scott to be sold to John Sanford, a citizen of the state of New York and a person who hated slavery. Sanford could simply have freed Dred Scott, but both Scott and Sanford wanted the Supreme Court to answer their questions about slavery. Thus, Scott sued his new owner in a federal trial court, using as his reason his living in a free state and free territory. Dred Scott lost. He then asked the Supreme Court to take the case. By the time all the legal work was over, it was 1857, and the Civil War was only three years away. The nation was already torn apart over the issues that led to the war. Slavery was one of those issues. The Dred Scott case became one of the most famous decisions of the Supreme Court because of the times.

Dred Scott's lawyers argued that residence in a free state or a free territory freed any slave and that once freed, an ex-slave automatically became a citizen. This was important because if Scott was not a citizen, he had no right to sue in the federal court. The argument of those who supported slavery was that Dred Scott was "property" and that the Fifth Amendment said that property could not be taken away from a person without due process of law. To them, this meant that Congress had no right to pass the Missouri Compromise because, by prohibiting slavery, it took away a man's property (his slaves). They also argued that Dred Scott had no real right to sue in a federal court because the Negroes in America were never intended to be citizens. They were able to point out that the Constitution even recognized the fact of slavery in three separate places and that the Constitution had not been amended.

What do you think?

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Questions for Discussion

1. Can you find three references to slavery in the Constitution? Check Article I, Section 2, Clause 3; Article I, Section 9, Clause 1; and Article IV, Section 2, Clause 3. Do any of these references help in deciding this case?

2. Do you think Dred Scott was a citizen of Missouri? Of the United States?

3. What do you think citizenship means?

4. What bearing should the Fifth Amendment's guarantee that no person be deprived of property without due process of law have on this case?

5. What questions must the Supreme Court answer to decide this case?

6. In what way is this case an example of Justice Brennan's observation "that the Supreme Court is called upon to face the dominant social, political, economic, and even philosophical issues that confront the nation"?

ARGUMENTS FOR PLAINTIFF AND DEFENDANT

Issue 1: Is Dred Scott a citizen of the United States?

Argument for Plaintiff, Dred Scott:

a. Scott lived in Illinois, a state which prohibited slavery.

b. Scott lived in Fort Snelling, in the territory where Congress had prohibited slavery by the Missouri Compromise of 1820. He lived in this territory as a free man.

c. When Scott returned to live in Missouri, he returned as a free man. Because he was a free man, the Constitution of that state made him a citizen of Missouri.

d. If Scott was a citizen of Missouri, he was a citizen of the United States.

Argument for Defendant, John Sanford:

a. In the Declaration of Independence, the phrase "all men are created equal" did not apply to slaves because they were considered property.

b. Article I, Section 9, Clause 1 of the Constitution of the United States gives the people the right to import slaves until 1808.

c. Article IV, Section 2, Clause 3 of the Constitution says that the states pledge to deliver runaway slaves.

d. Because of these clauses, the Constitution recognizes slaves to be property and not members of the political community.

e. Furthermore, Article I, Section 8, Clause 4 of the Constitution says that Congress has the power to make rules for naturalization. Therefore, Congress, not the states, decides who shall be citizens of the United States.

f. Because of the Declaration of Independence, the Constitution, and the power of Congress to decide citizenship, Dred Scott is not a citizen of the United States.

Issue 2: Does Scott have the right to sue in federal courts?

Argument for Plaintiff, Dred Scott:

a. Scott is a citizen of Missouri.

b. Sanford is a citizen of New York.

c. Article III, Section 3, Clause 1 of the Constitution says that the courts of the United States shall hear cases "between citizens of different states."

d. Because of this clause in the Constitution, Scott has a right to sue Sanford in the courts of the United States.

Argument for Defendant, John Sanford:

a. Only citizens of the United States may sue in its courts.

b. "Citizen" in the Constitution was not meant to apply to slaves.

c. Dred Scott is not a citizen and cannot sue in federal courts.

Issue 3: Does the Constitution of the United States give Congress the power to make laws, like the Missouri Compromise of 1820, which prohibit slavery in the territories?

Argument for Plaintiff, Dred Scott:

a. Article IV, Section 3, Clause 2 of the Constitution says that Congress has the power to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

b. This clause gives Congress the power to acquire territory and to govern that territory until it becomes a state.

c. The Constitution does not say what power Congress may have over people or property in that territory.

d. Therefore, Congress may pass laws like the Missouri Compromise of 1820.

Argument for Defendant, John Sanford:

a. Article IV, Section 3, Clauses 1 and 2 of the Constitution give Congress the power to keep territories until such time as they can become self-governing and can enter the union.

b. Territories are not the same as colonies. Territories may someday become states. Congress may not rule territories as if they were colonies.

c. Amendment V to the Constitution says that no person "shall be deprived of...property without due process of law." Slaves are property.

d. Congress may not take a person's property without due process. The Missouri Compromise deprives people of their property without due process. In passing laws like the Missouri Compromise, Congress is imposing its will on territories, something the Constitution did not intend. The Missouri Compromise is, therefore, unconstitutional.

Handout 20-4 1 of 1

DECISION: DRED SCOTT V. SANFORD

In 1857 the Supreme Court ruled that Scott was still a slave; that is, property, not a citizen of the United States. Therefore, he did not have the right to sue for his freedom in the federal courts. Insofar as the Missouri Compromise deprived slave owners of their property when they traveled into areas where slavery was prohibited, the Compromise was an unconstitutional violation of the Fifth Amendment. Congress had no power to ban slavery in the territories of the United States. The court said:

> An act of Congress which deprives a citizen of his liberty or property, without due process of law, merely because he came himself or brought his property into a particular territory of the United States, and who had committed no offense against the laws, could hardly be dignified with the name of due process of law.

The Chief Justice emphasized that the Constitution had recognized slavery. He was joined by two other justices in the view that slaves "had no rights or privileges but such as those who held the power and the government might choose to grant them."

Many people had hoped that the Supreme Court would settle the slavery issue with its ruling in this case. Of course, it did not. Public reaction to the decision was stormy. The Dred Scott case was not a solution to the slavery controversy; instead, it was another cause of the Civil War.

21. SEPARATE BUT EQUAL:
FROM "JIM CROW" TO PLESSY V. FERGUSON (1896)

Introduction:

This activity includes an examination of the meaning of the Constitutional amendments that gave black people their freedom after the Civil War. It also focuses on the social realities of segregation and the famous Plessy case, which legally sanctioned the "separate but equal" doctrine. While the activity is intended for use at either grade 8 or 11, Handout 21-2 is included for upper-level students to provide an in-depth look at the Fourteenth Amendment. An attorney knowledgeable about the Fourteenth Amendment would be an excellent resource in discussing this handout. A court simulation is also included as an optional method of examining the case for 11th-grade students. The activity can be used when studying Reconstruction.

Objectives:

1. To develop understanding of the meaning and interpretation of the Thirteenth, Fourteenth, and Fifteenth Amendments.

2. To increase awareness of social realities of oppression and segregation of blacks in the South after the Civil War.

3. To develop understanding of the "separate but equal" doctrine.

4. To increase ability to analyze political cartoons.

5. To develop critical thinking skills.

Level: Grade 8 and above

Time: One to two class periods

Materials: Handouts 21-1, 21-3, and 21-4 (grade 8) or 21-1 through 21-6 (grade 11) for all students

Procedure:

1. Pass out Handout 21-1. Have students read the three amendments and list the guarantees afforded black people in each of them.

2. Read and discuss the information preceding the cartoon. Then have students analyze the cartoon and discuss the questions.

3. Ask 11th-grade students to read Handout 21-2 as homework or in class. This handout presents an in-depth analysis of the meaning and interpretation of the Fourteenth Amendment in the years after the Civil War. It is recommended that an attorney be invited to the class to discuss the substance of the materials.

4. Pass out Handout 21-3. Using the case study method, have students analyze the facts, issues, and arguments of the case. Discuss the questions following the case. (NOTE: Grade 11 teachers may at this point wish to conduct the simulation, as described below.)

5. Distribute Handout 21-4 and read the decision to the class. Discuss the decision, the reasoning behind it, and its effects on black people's lives.

To conduct the simulation:

1. Explain to students that they will participate in a court simulation in which the constitutional issues of the Plessy case will be argued. They will be divided into groups of three. One student in the group will play the role of the attorney for Plessy, one the attorney for Ferguson, and one the judge. The attorneys will develop arguments for their sides and present them to the judge. The judge will make a decision in the case. The groups will conduct their simulations simultaneously.

2. Divide the class into groups and assign roles. Distribute Handout 21-5 to students representing Plessy and Handout 21-6 to students representing Ferguson. Allow attorneys time to analyze materials and prepare arguments.

3. While attorneys are preparing, meet with judges and instruct them to reread the case and prepare questions to ask the attorneys. Explain that they should conduct their simulation as follows:

--Allow attorney for Plessy five minutes to present argument.

--Allow attorney for Ferguson five minutes to present argument.

--Allow one-minute rebuttal by Plessy's attorney.

--Judge may interrupt during arguments to ask questions during the proceedings.

--Judge will deliberate and deliver a decision along with reasons to support that decision.

4. Conduct the simulations. Make sure groups are spaced so as not to distract each other.

5. Call on each judge for his or her decision and reasoning. Record decision on the board.

6. Distribute Handout 21-4 and read the decision with the class. How do the decision and reasoning differ from or resemble those of the student judges? What were the results of the decision?

THE RISE OF SEGREGATION

After the Civil War, the Thirteenth, Fourteenth, and Fifteenth Amendments gave citizenship to four million black Americans. What rights did these constitutional amendments guarantee?

THIRTEENTH AMENDMENT (1865)

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

FOURTEENTH AMENDMENT (1868)

...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FIFTEENTH AMENDMENT (1870)

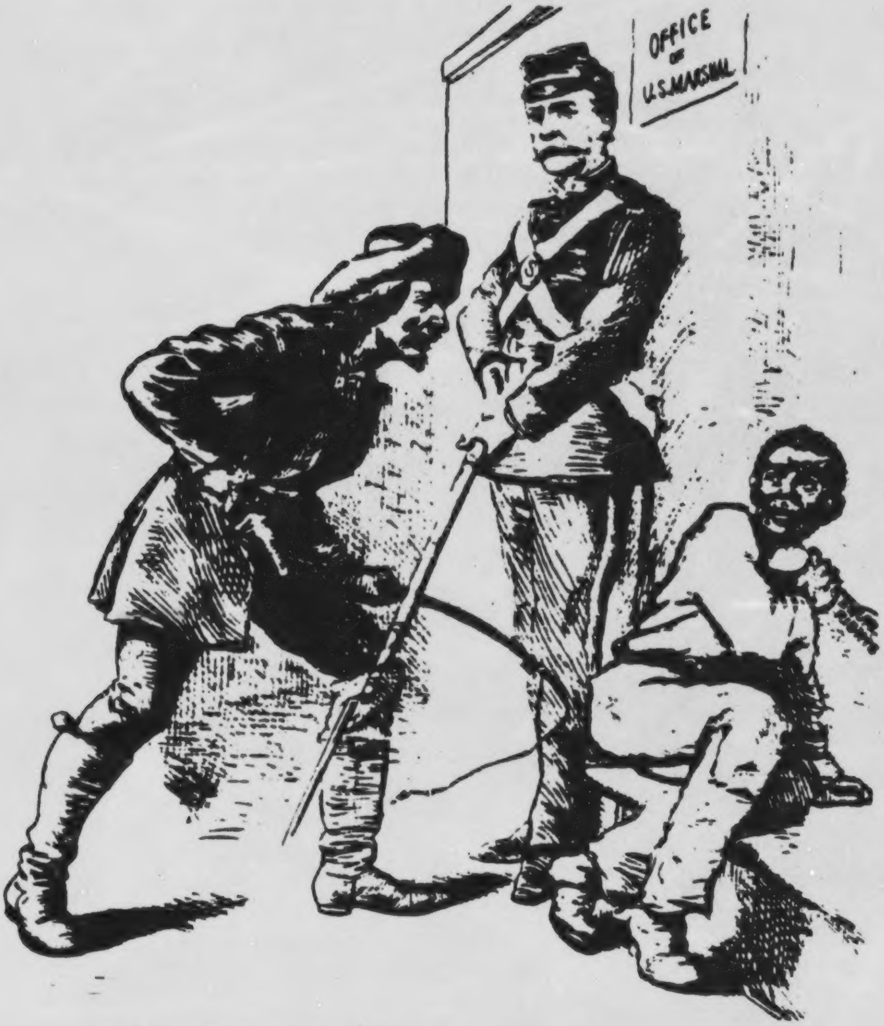
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Even though the constitutional amendments were the new "law of the land," they did not bring freedom to black people. After the war, government troops had been sent to the South to keep order and protect the rights of freed slaves. After the last soldiers were withdrawn from the South in 1877, white Southerners soon began to regain control of their states. Slowly, all black men were forced out of state governments. Their right to vote was taken away. Most of their new rights became nothing but words on a piece of paper.

The Southern states passed a number of laws called "Jim Crow" laws. These laws were meant to segregate, or keep separate, black people from white people. They required that public places--such as schools and hotels--set up "separate but equal" sections for blacks and whites.

Adapted from Law in a New Land (Boston: Houghton-Mifflin Co., 1972). Used with permission.

In the late 1800s, black Americans were free, but they weren't treated equally. Look at the cartoon below. It appeared in a New York magazine in 1875.



"Shall we call home our troops?"

Questions for Discussion

1. Look at each figure in the cartoon. What people do each of the figures stand for?

2. Considering what you have just read about "Jim Crow" laws, what prediction do you think the cartoon makes?

3. Do you think the cartoon is accurate?

FOURTEENTH AMENDMENT: THE RISE AND FALL OF HOPE

After the Civil War (1861-1865), the young nation underwent a boom of growth that changed her into a powerful and complex giant. On continent-spanning rails, she opened the West. Free land, the Industrial Revolution, the rise of Big Business brought waves of immigrants flooding to her shores. Her cities mushroomed. She experienced strikes, labor violence, political corruption, rising national income, and periods of financial panic. Amid all this turmoil, America failed to heal the bitter wounds left by the war between North and South. And the forgotten ex-slave, freed in war, witnessed in peacetime the forces of segregation washing away many of his new liberties.

For four million ex-slaves, the postwar era began on a note of high hope. The Fourteenth Amendment held out a promise of full citizenship. It defined "citizens of the United States" in a way that included blacks--thus nullifying the Dred Scott decision on the point.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.
> --Fourteenth Amendment, U.S. Constitution (1868)

Privileges and Immunities

Next, the Fourteenth Amendment prohibited any state from interfering with the "privileges or immunities" of U.S. citizens. What did this mean? To the amendment's sponsor, Rep. John A. Bingham of Ohio, the "Privileges and Immunities Clause" referred to the liberties guaranteed under the Bill of Rights. In Barron v. Baltimore (1833), the Supreme Court had rules that the first ten amendments to the Constitution protected citizens against interference by the federal government only. Bingham, strongly opposed to such a narrow ruling, insisted that the Fourteenth protected Bill of Rights liberties against state interference as well.

Five years after the amendment's adoption, however, the first Supreme Court case interpreting the amendment rejected this idea. The Slaughter-House Cases (1873) involved a Louisiana statute confining all livestock-slaughtering business in New Orleans to one corporation in one small section of the city. Other butchers complained that the law was a monopoly taking away their businesses. It deprived them of their "privileges and immunities" as U.S. citizens. The Supreme Court answered no. The butchers' rights were state, not federal, privileges and immunities.

From Vital Issues of the Constitution (Boston: Houghton-Mifflin Co., 1975). Used with permission.

Besides, the butchers' claim did not involve race. The Fourteenth Amendment, the court held, was designed chiefly to protect citizenship rights of ex-slaves.

Down through the years, in a number of separate cases, the Supreme Court eventually expanded coverage of the Fourteenth Amendment to include all persons--and protect most of the Bill of Rights' "fundamental liberties" against invasion by the states. But for many years after the Slaughter-House Cases, the amendment was narrowly restricted to blacks.

> No person shall...be deprived of life, liberty, or property,
> without due process of law.
> --Fifth Amendment, U.S. Constitution (1791)

Due Process of Law

Two other passages have loomed as the vital power-clauses of the Fourteenth Amendment. The "Due Process Clause," applying Fifth Amendment liberties to the states, barred a state from taking any person's "life, liberty, or property without due process of law." Due process meant all the proper steps required for a fair hearing in a legal proceeding. The other clause, the "Equal Protection Clause," prohibited a state from denying any citizen "equal protection of the laws." For the black race, here was the heart of the Fourteenth Amendment, the potential keystone upon which would rest their historic quest for equal rights.

> Fairness of procedure is "due process in the primary sense."
> Justice Frankfurter, Joint Anti-Fascist Refugee Committee v. McGrath (1951)

Background of Equal Protection

The Fourteenth Amendment provides the first clear reference to equal rights anywhere in the Constitution. True, the Declaration of Independence in 1776 had proclaimed as a fundamental American principle "that all men are created equal." Of course, this did not imply that all persons were equal in intelligence, skills, or strength. It simply meant that all persons should be treated equally by the government. The concept of equality before the law, however, was not spelled out in the original Constitution. That had to wait for the Equal Protection Clause.

> "Equal protection of the laws" places all upon a footing of
> legal equality and gives the same protection to all for the
> preservation of life, liberty and property, and the pursuit
> of happiness.
> --Justice Swayne, The Slaughter-House Cases (1873)

Reasonable Classification

Even these words, "equal protection of the laws," did not require a state law to apply to each and every person. A law could constitutionally apply to a special class of persons or groups. It could, for instance, apply to railroads or burglars. But the category, or class, had to be "reasonable." A law could not be valid if, for example, it levied a tax on blue-eyed females. The category could not be so unequal that it was completely discriminatory.

> Equal protection is the most important single principle that any nation can take as its ideal.
> --Justice Douglas, We the Judges (1955)

State Action

Besides reasonable classification, the Supreme Court has placed another restriction on the Equal Protection Clause. The rule arose in the Civil Rights Cases of 1883. Here the court held unconstitutional sections of the Civil Rights Act of 1875. That law made it a crime for one person to deprive another of the "full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement." The 1875 provisions were based on the Fourteenth Amendment. The Supreme Court, however, ruled that the amendment was limited to "state action." It did not apply to action by individuals.

> Individual invasion of individual rights is not the subject matter of the (14th) Amendment. It has a deeper and broader scope. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws.
> --Justice Bradley, The Civil Rights Cases (1883)

Advent of Segregation

The Civil Rights Cases reflected the mood of the times. The federal government was tiring of the "Negro question." White men in the South were donning the hood and robe of the Ku Klux Klan; by night they were riding to whip and hang and terrorize blacks from asserting their civil rights. Eventually white voters recaptured political control of state governments across the Southland. And in 1877 the United States withdrew the last of its Reconstruction troops. Encouraged by the Supreme Court's position in the Civil Rights Cases, Southern states began passing laws rigidly segregating the races. The freedman increasingly found himself legally restricted to separate schools, housing, and public facilities. Then, in 1896, came the Plessy case. It put America's highest judicial stamp of approval on second-class citizenship for black people. The case, indeed, was the culmination of decades of dashed hopes. And its doctrine, "separate but equal," would prevail for another half-century.

SEPARATE BUT EQUAL: PLESSY V. FERGUSON (1896)

Homer Plessy was a citizen of the United States and a resident of the state of Louisiana. Plessy was of mixed descent; he was 7/8ths white and 1/8th black. On June 7, 1892 he purchased a first-class ticket on the East Louisiana Railway from New Orleans to Covington, Louisiana. The train made the trip from New Orleans north around Lake Ponchartrain to Covington.

Homer Plessy walked to the waiting train. Some cars were marked "FOR COLOREDS ONLY," others "FOR WHITES ONLY." Plessy went to the car "for whites only," entered, and took a seat.

The General Assembly of the State of Louisiana had passed a law in 1890 requiring in-state trains to provide "separate but equal" coaches for members of the "white race" and members of the "black race." No passenger, because of his or her race, was allowed to take a seat in a car marked for those of another race. The law stated:

> Louisiana Statute 1890, No. 111, p. 152
>
> Section I: That all railway companies carrying passengers in their coaches in the State, shall provide equal but separate accommodations for the white and colored races by providing two or more passenger coaches for each train, or by dividing the passenger coaches by a partition so as to secure separate accommodations: Provided that this section shall not be construed to apply to street railroads. No person or persons shall be admitted to occupy seats in coaches, other than the ones assigned to them on account of the race they belong to.
>
> Section II: That the officers of such passenger trains shall have the power and are hereby required to assign each passenger to the coach or compartment used for the race to which such passenger belongs; Any passenger insisting on going into a coach or compartment to which by race he does not belong, shall be liable to a fine of twenty-five dollars, or in lieu thereof to imprisonment for a period of not more than twenty days in the parish prison... And should any passenger refuse to occupy the coach or compartment to which he or she is assigned by the officer of such railway, said officer shall have power to refuse to carry such passenger on his train, and for such refusal neither he nor the railway company which he represents shall be liable for damages in any of the courts of this State.

When the conductor arrived, Plessy was ordered to leave and to take a seat in the section of the train for black people. Plessy refused to comply with the demands of the conductor. A policeman was summoned, and Plessy was forcibly removed from the train. Plessy was taken to jail to answer a charge of having violated Louisiana law.

Plessy filed for a writ of prohibition against the Honorable John H. Ferguson, judge of the criminal District Court for the Parish of Orleans. The writ of prohibition was to stop Judge Ferguson from enforcing the law because that law was in conflict with the Fourteenth Amendment to the U.S. Constitution and was, therefore, null and void. Because the Fourteenth Amendment had made him a citizen, Plessy claimed that he was entitled to the privileges and immunities of citizens and to equal protection of the laws.

Because this was an important legal question, the case had to be heard by the Supreme Court of Louisiana. There the lawyers for the state argued that the Fourteenth Amendment was intended to protect political rights such as voting or holding public office. Seating on a train was not a political right; therefore, the state, by law, could separate the races as long as equal rights were provided for both races. The Supreme Court in Louisiana denied the writ of prohibition and ordered Plessy to stand trial.

Homer Plessy then took his case to the Supreme Court of the United States.

Questions for Discussion

1. What is segregation? Have you seen segregation in practice? Give examples.

2. What is meant by "separate but equal"? Explain. Do you think that the segregated railway cars of Homer Plessy's day were really equal? Can anything that is segregated ever be truly equal? Why or why not?

4. What does "equal protection of the laws" mean? Who has a right to "equal protection of the laws"? Look at the Fourteenth Amendment on Handout 21-2.

5. How do you think the U.S. Supreme Court ruled in Homer Plessy's case? Why?

Handout 21-4

DECISION: PLESSY V. FERGUSON

The Supreme Court ruled in favor of the state of Louisiana. The court said that it was not the intention of the Fourteenth Amendment to "abolish distinctions based upon color, or to enforce social, as distinguished from political equality." According to the court, the State of Louisiana could make laws that took into account the customs and traditions of the people and the need to keep public peace and order. The court said that if the two races were ever to meet "on terms of social equality, it must be the result of natural affinities...and a voluntary consent of individuals," not a result of law.

Only one Justice disagreed. In his famous dissent, John Marshall Harlan said that "in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is colorblind, and neither knows nor tolerates classes among citizens..."

Justice Harlan warned that this decision would be used to segregate all aspects of life in many states. He was right. "Separate but equal" laws hit blacks in every part of their lives. They kept blacks out of the best schools and libraries. They put blacks in the back of public buses. These laws made blacks sit in separate waiting rooms in train stations. They even made blacks use separate drinking fountains.

It would take another half century before the "separate but equal" doctrine would be reversed.

Handout 21-5 1 of 1

ARGUMENT FOR PETITIONER, HOMER PLESSY

1. Privileges and Immunities

The Fourteenth Amendment made former slaves and their descendants citizens of the United States and of the state where they reside. As a citizen, Homer Plessy is entitled to the privileges and immunities that other citizens enjoy. Traveling freely without being told where to sit is just one privilege citizens enjoy. The Louisiana law violates this privilege.

2. Equal Protection of the Law

The Louisiana law is unconstitutional because it violates the Fourteenth Amendment's "equal protection" clause. A law that causes people to be treated differently solely on the basis of race fails to apply the force of law equally to all citizens.

3. Social and Political Equality

One purpose for the Fourteenth Amendment was to insure equal treatment of former slaves. This equal treatment is not limited to voting rights or to holding public office. It includes social equality as well. When the law forces people to sit apart on trains, there can be no social equality. Separate cannot be equal.

4. Laws Must Benefit the Community

If separate cars on a train are permitted, what is to stop the law from requiring blacks to walk on one side of the street or to sit on one side of a courtroom? A railroad is a public highway. True, the company that owns the railroad is private, but its work is public. The use of that railroad is intended to benefit the entire community. No public facility is meant to serve only one part of a community.

ARGUMENT FOR RESPONDENT, HON. JOHN H. FERGUSON

1. Political, Not Social Equality

The sole purpose of the Fourteenth Amendment was to insure political equality--voting rights, holding public office. Choosing a seat on a train is not a political right. Social equality cannot be promoted by law. If the two races are to meet as social equals, it must be because they want it on a voluntary basis.

2. Laws Reflect Customs and Traditions

The legislature of a state may pass laws that promote the customs and traditions of the people it was elected to serve. It may also pass laws that preserve peace and order. It has long been the custom in Louisiana to keep the races apart. The people of that state desire it as one means of preserving peace and order. Therefore, the legislature is operating within its legal boundaries.

3. Previous Supreme Court Decisions Uphold Separation

The Supreme Court of the United States has generally upheld other laws that separate the races. Boston has been permitted to establish separate schools for children of different ages, sexes, and colors. A similar law has been passed by Congress for the schools in the District of Columbia. Laws forbidding interracial marriages have also been upheld by the Supreme Court.

4. Laws Do Not Promote Inferiority of Races

State laws that permit or require the separation of the races do not mean that one race is inferior. If blacks feel inferior, it is because they choose to feel that way.

22. MOCK IMPEACHMENT TRIAL OF ANDREW JOHNSON

Introduction:

This mock trial not only brings to life an important historical event during the period of Reconstruction, but also makes real the important constitutional issue of separation of powers. Preparation and enactment of the impeachment trial takes approximately four to six days. The wide range of social studies skills and content the activity reinforces and the exciting format should make it a motivating exercise for both students and teachers.

Objectives:

1. To develop understanding of impeachment procedures as outlined in the Constitution.

2. To develop understanding of the political climate during Reconstruction that resulted in the impeachment of Andrew Johnson.

3. To reinforce understanding of separation of powers and the role of each branch of government.

4. To promote recognition of the potential for conflict among the three branches of government.

5. To enhance reading, writing, critical thinking, speaking, decision-making, and argumentation skills.

Level: Grade 11 and above

Time: Four to six class periods

Materials: Copies of Handouts 22-1 through 22-6 for all students; name tags for each role player

Procedure:

DAY 1

1. Hand out the packet to students. Review the background information on Handout 22-1. Teachers might want to review provisions for impeachment in the Constitution, making sure all students understand the Tenure of Office Act.

2. Explain that students will enact the impeachment trial of Andrew Johnson. Read through the role descriptions on Handout 22-2. Select students or have students volunteer to take roles. The remainder of the class will play the senators. (In order to motivate students to take various roles, teachers might assign a sliding scale of extra credit points for participation in the activity.)

3. Briefly summarize steps in the impeachment trial (see Handout 22-3) so that students have a general idea of the end product of their preparation.

4. As homework (or in class if time remains), have students read the handouts that pertain to their roles.

DAY 2

5. Have students form the following groups to begin case preparation:

--Prosecution attorneys and their witnesses

--Defense attorneys and their witnesses

--Senators

--Chief Justice and Sergeant-at-Arms

Have groups reread and discuss the materials pertinent to their roles.

6. Work with each group during case preparation. Assist each group as follows:

--Instruct the prosecution to discuss its case and bring out all the facts and arguments in its favor and against it. Have prosecution attorneys review their tasks on Handout 22-3 and divide the tasks among themselves. Instruct attorneys who are doing direct examination to work with their witnesses to prepare questions and responses. Instruct witnesses to learn their testimony.

--Work with defense as done with prosecution.

--Have senators review materials. Explain that they will listen to testimony and take notes. Each senator will then write a one-paragraph decision on the case after the trial. Each will be asked by the Chief Justice to present his/her opinion. Since the senators will have less to do during preparation than other groups, they could be assigned individual or group research projects on topics related to Reconstruction legislation, to be discussed after the trial. They could also be assigned as "understudies" for each of the witnesses and prepare these roles as indicated.

--Chief Justice and Sergeant-at-Arms should carefully review the steps in the mock trial and prepare their roles. Both could also be assigned to do research on Salmon Chase.

DAY 3

7. Continue case preparation (or have students complete as homework).

DAY 4

8. Conduct the trial. As homework, have senators write their decisions.

DAY 5

9. Reconvene the trial to have senators deliver their decisions. Compare the result with the actual outcome of the impeachment trial.

10. Debrief the trial. Ask students to assess what was valuable about the experience and evaluate performances. Discuss the issue of separation of powers. If research projects were assigned, have students discuss their findings.

11. As a possible follow-up, have students write a one-page paper on one of the following topics:

--Briefly explain why Andrew Johnson was impeached, touching on the significance of the following: Tenure of Office Act, Radical Republicans, Reconstruction.

--If Andrew Johnson had been convicted, would there have been any significant changes? Give your opinion based on what you learned from the arguments during the trial.

BACKGROUND AND CHRONOLOGY

Abraham Lincoln was shot on April 14, 1865. He died the next day, leaving the Presidency and the conclusion of the Civil War in the hands of his Vice-President, Andrew Johnson. A Tennessee Democrat refusing to secede with his state, Johnson served Lincoln well early during the Civil War as a Southern unionist acting as military governor in the defeated parts of Tennessee. He was rewarded for his efforts by being nominated and elected as the Republican candidate for Vice-President.

He shared Lincoln's ideas for Reconstruction, a plan whereby the South would be brought back into the Union as quickly as possible, in a way that would bring hatreds to an end. It was one thing for Lincoln to try to "bind up the nation's wounds with malice toward none and charity for all," but it was quite another for a Southerner to try it. Distrusted because of his Southern background and his fiery temper, the new President quickly made enemies.

The Radical Republicans who dominated the Senate and the House wanted to punish the South for the war, rather than welcome them back into the Union. When they discovered Johnson's intent to follow Lincoln's policies, they soon came into open conflict. As a result, the Radical Republicans attempted to reduce the power of the presidency, arguing that the President failed to force the South to admit defeat and give a new place to the freed black people.

They argued that unless the South was coerced, it would resume a society much like pre-Civil War days. The black people would remain slaves in fact if not in name.

Thus, the issue of how the South should be reconstructed brought the President and Congress to the collision course that led to the impeachment of the President and the testing of our governmental system of separation of powers.

The conflict began when Congress passed a new Freedman's Bureau Bill, which was intended to help former slaves but punish former masters. Johnson vetoed the bill and Congress lacked votes to override the veto. Johnson then vetoed every important Reconstruction Act thereafter, firmly believing them to be unconstitutional and clearly intended to treat the South as conquered territory.

Congress responded by overriding each presidential veto. Then Congress turned its attention to the "obstructionist," as it called the President. Congress passed a series of acts to restrict the power of the presidency. The Army Appropriation Act attempted to take away the President's constitutional power as Commander-in-Chief of the Army by requiring all army orders to be issued through the General of the Army. The Third Reconstruction Act transferred the presidential power of appointment and removal of officials to the General of the Army. The Tenure of Office Act required that the Senate approve all appointments of executive officials made by the President. Specifically, the Tenure of Office Act provided that (1) when the Senate is not in session, the President can remove an official and fill a vacancy with an interim appointment. When the Senate reconvenes, it must be notified of the appointment within 20 days. The Senate must approve the new appointment. If the Senate does not approve the appointment, the appointee must leave office and be replaced by the former official; and (2) when the Senate is in session, the President cannot remove an official unless the Senate approves the replacement. These are some of the ways in which Congress tried to reduce the constitutional powers of the presidency.

Johnson was determined to fight this attack through to the bitter end, knowing it could destroy him and/or the office of the presidency. He felt that important constitutional questions had to be resolved. Therefore, he decided to test the constitutionality of the Tenure of Office Act. Johnson dismissed his secretary of war and appointed a new secretary, who was not approved by Congress. In response, the House immediately adopted a resolution that the President "be impeached of high crimes and misdemeanors in office" for violation of the Tenure of Office Act.

Under the Constitution, a President may be impeached for "treason, bribery or other high crimes and misdemeanors." The issues arising from this case involve these questions: Was Johnson indeed guilty of violating the act? Is a possible violation of the Tenure of Office Act grounds for impeachment? Is an "impeachable offense" anything which Congress wishes to define as a high crime or misdemeanor? If this is so, doesn't this place a President in constant jeopardy of displeasing Congress? How would this affect the separation of powers?

CHRONOLOGY

August 1867 - Johnson wanted to get rid of Edwin Stanton, secretary of war and a Lincoln appointee. He fired him and appointed General U.S. Grant. The appointment was an interim appointment, since Congress was not in session. When the Senate reconvened, it would not approve the appointment. Grant then resigned. The President had not yet violated the act.

February 1868 - Johnson removed Stanton again and appointed Adjutant General Lorenzo Thomas as secretary of war. This time, the Senate was in session and regarded the President's action as a violation of the Tenure of Office Act. The Senate refused to approve Thomas. Thomas was arrested and placed in a District of Columbia cell. Shortly after, lawyer Walter Cox tried to obtain a writ of habeas corpus but discovered that Thomas had been released.

February 24, 1868 - The House voted 128 to 47 to impeach the President.

March 2-3, 1868 - The House voted on 11 articles of impeachment.

March 30, 1868 - The impeachment trial began before the Senate.

May 1868 - The balloting resulted in 35 votes for conviction, 19 against. The count was one vote short of the two-thirds majority necessary for conviction.

ROLES FOR IMPEACHMENT TRIAL

Attorneys for the Prosecution (called Managers) - Appointed by the House of Representatives to prosecute the case before the Senate, they were all opponents of the President and had worked hard to find impeachable charges against him.

Thaddeus Stevens - The longtime House leader of the Radical Republicans, he was a vindictive man who felt that the South must be punished for the war. He was not well, but lent intelligence and dedication to his cause.

Benjamin Butler - A hard-nosed Radical Republican, he had fought for the North in the Civil War and had gone back to his Massachusetts law practice before returning to Congress. He is described as "the legal razzle dazzle of a Perry Mason with a tongue dipped in nitric acid."

John A. Bingham - An able member of the House, he too was a Radical Republican.

Attorneys for the Defense - These men either volunteered or were asked to serve President Johnson as his legal counsel. They provided their services to the President without compensation. All were among the best legal minds in the country.

Henry Stanberry - Stanberry resigned his Cabinet position as attorney general to act in the defense of the impeached President. He felt he could not act as attorney general without people's saying that the taxpayers' money was being used for the President's defense. He was the most capable of attorneys.

Benjamin R. Curtis - Another very capable lawyer, he was an ex-justice of the U.S. Supreme Court.

William Evarts - Another very able attorney, he was the acknowledged leader of the New York bar.

Witnesses for the Prosecution

George W. Karsner - A robust braggart, he was determined to get to know Adjutant General Lorenzo Thomas because they were both from Delaware. In talking with Thomas about his appointment as secretary of war, he heard comments from Thomas about the presidential intent which were helpful to the Managers' case.

Ed Farwell - A newspaperman covering the President's speeches made in St. Louis and Cleveland, he is the author of a newspaper article to be read as evidence of how the President acted toward questions about Congress. The article suggests that the President made derogatory remarks about the honor of Congress as well as the intelligence of its members. The article can be written by the student taking this role, using the sample articles (see Handout 22-6) as guides, or the articles provided can be used.

Colonel William H. Emory - As the commander of the District of Washington, he was responsible for the military safety of the capital. When the President asked him to strengthen forces in the region, he failed to follow the orders, even though constitutionally the President is the Commander-in-Chief of the armed forces. When asked why, he pointed out that he could accept orders from no one but General Grant. This was in response to the Army Appropriation Act of 1867, which required that all army orders be issued through the General of the Army. He is to testify to the angry reactions of the President, implying that Johnson intended to use the army to become a dictator.

Witnesses for the Defense

Adjutant General Lorenzo Thomas - Even though slow and ponderous, Thomas would not allow himself to be "bullied" by the prosecution. He was secretary of war for only 24 hours, after which he was removed because of lack of congressional approval. Thomas was arrested and placed in a cell in a District of Columbia jail. Very shortly after, he was released without further hearing.

Walter Cox - Cox was a Washington lawyer called in to press for a writ of habeas corpus after Thomas was arrested. Cox wanted the case to go to court for eventual testing of the constitutionality of the Tenure of Office Act. Cox should play the role as though a recognized authority on constitutional law. This will enable him to speculate as to the possible fate of the governmental system of separation of powers if the President is found guilty.

Gideon Welles, Secretary of the Navy - As the only Cabinet member to testify, he was in a position to tell about some of the Cabinet meetings in which the Tenure of Office Act was discussed. He was able to testify that Edwin Stanton actually helped write the justification of the President's veto of the Tenure of Office Act.

Chief Justice of the Supreme Court, Salmon P. Chase - The Chief Justice presides over impeachment trials. He conducts the trial, determining whether objections made should be sustained or overruled. Chase was a former senator from Ohio who wanted to be President. An ardent abolitionist, he served in Lincoln's first Cabinet as secretary of the treasury. He became a challenger to Lincoln in the election of 1864. When Lincoln was elected to a second term, he appointed Chase as chief justice upon the death of Taney. Thought to support Radical Republican positions against Johnson, it came as a surprise when he remained fair and judicious in the impeachment proceedings.

Sergeant-at-Arms - He/she gives the statement that opens the impeachment trial, gives the oath to each witness, and helps maintain order and dignity of the proceedings.

Senators - Those not assigned to other roles will act as senators. Senators listen to testimony, prepare individually written verdicts, and deliver them following the trial.

STEPS IN MOCK IMPEACHMENT TRIAL

Sergeant at Arms: Everyone, please rise. (Chief Justice enters and takes his place.) Hear ye! Hear ye! All persons are commanded to keep silence while the Senate is sitting for the trial of the Articles of Impeachment by the House of Representatives against Andrew Johnson, President of the United States. Please be seated.

Your Honor, I wish to present the Managers of the House of Representatives, who will be acting as the prosecution. (Each man rises as his name is called.) Thaddeus Stevens, Honorable Congressman from Pennsylvania. Benjamin Butler, Honorable Congressman from Massachusetts. John A. Bingham, Honorable Congressman from Ohio.

Your Honor, I wish to present the defenders of the President. The Honorable Henry Stanberry, former attorney general. The Honorable Benjamin R. Curtis, former associate justice of the United States Supreme Court. William M. Evarts, distinguished member of the New York bar.

Chief Justice: We are in this trial to determine the innocence or guilt of Andrew Johnson, President of the United States, of the impeachment charges brought by the House of Representatives. Will you please read the charges so made?

Sergeant at Arms: Andrew Johnson, President of the United States, has violated the Tenure of Office Act with full cognizance of his actions. He removed Edwin Stanton as secretary of war while the Senate was in session and appointed Adjutant General Lorenzo Thomas as secretary of war. Both of these actions are clear violations of said act. The President of the United States, Andrew Johnson, did willfully malign the Congress of the United States in three public addresses. The statements made in these addresses were so indecent and unbecoming to the office of the presidency that he has brought to his office contempt, ridicule, and disgrace.

Chief Justice: Have you served the President, Andrew Johnson, with a summons requesting his presence at this trial?

Sergeant at Arms: I have so done, Your Honor.

Chief Justice: Counselors for the prosecution, are you ready to present your case?

Prosecution: We are, Your Honor.

Chief Justice: Counselors for the defense, are you ready to present your case?

Defense: We are, Your Honor.

Chief Justice: You may be seated. (Addressing the Senate) We are in this trial to determine the innocence or guilt of the impeachment charges brought by the House of Representatives against Andrew Johnson, President of the United States. I need not recount to you the gravity of this trial. It is the first such trial in history to decide impeachment charges made against a President of the United States. The Constitution specifies clearly that one cannot be convicted of impeachment charges except for treason, bribery, high crimes, or misdemeanors. You must determine if the charges so brought are consistent with the constitutional definition of what is an impeachable offense.

Even though this is not a court of law, the Constitution acknowledges the necessity for those who will be deciding the innocence or guilt of charges made against an official of the United States government to take an oath or affirmation. Therefore, will the Senate please rise? (The Chief Justice rises with the Senate and holds up his right hand.) The members of the Senate will repeat after me: "I do solemnly swear that in all things appertaining to the trial of the impeachment of Andrew Johnson, President of the United States, I will do impartial justice to the Constitution and the laws - so help me God." You may be seated. Does the prosecution wish to give an opening statement?

Prosecution: (The prosecution explains what it intends to prove through testimony of witnesses.)

Chief Justice: Does the defense wish to give an opening statement?

Defense: (The defense explains how it will defend charges through testimony of witnesses.)

Chief Justice: The prosecution may present its case. Call your witnesses.

Prosecution: The prosecution wishes to call its first witness ______ (The witness is questioned to bring out important information to support the prosecution's case.)

Chief Justice: Does the defense wish to cross-examine the witness? (The witness is questioned to bring out information to hurt prosecution's case. Prosecution calls the other two witnesses and defense cross-examines them in turn.)

Chief Justice: The defense may present its case. (The defense calls each witness and the prosecution cross-examines them in turn.)

Chief Justice: Does the prosecution wish to make a closing statement? (Prosecution reviews testimony and argues its case.)

Chief Justice: Does the defense wish to make a closing statement? (Defense reviews testimony and argues its case.)

Chief Justice: The trial of the Articles of Impeachment charges by the House of Representatives against Andrew Johnson, President of the United States, is now recessed until tomorrow, at which time a vote will be taken of each senator present. Two-thirds majority of the members present is required for conviction.

NEXT DAY

Sergeant at Arms: Will everyone please rise for the Chief Justice of the United States? Please be seated.

Chief Justice: Have the members of the Senate arrived at a decision? (To each member of the Senate) Senator ________________, how say you? Is the respondent Andrew Johnson, President of the United States, guilty or not guilty as charged?

Chief Justice: The Senate having found the President (guilty or not guilty), these proceedings are now at an end. Adjourned.

TASKS FOR ATTORNEYS

Prosecution	Defense
1. Opening statement	1. Opening statement
2. Direct examination of Karsner	2. Cross-examination of Karsner
3. Direct examination of Farwell	3. Cross-examination of Farwell
4. Direct examination of Emory	4. Cross-examination of Emory
5. Cross-examination of Thomas	5. Direct examination of Thomas
6. Cross-examination of Cox	6. Direct examination of Cox
7. Cross-examination of Welles	7. Direct examination of Welles
8. Closing statement	8. Closing statement

ARGUMENTS FOR PROSECUTION (MANAGERS) AND DEFENSE

Prosecution

1. The President breaks the law because he thinks the law is unconstitutional. Is the President "above the law"? Is the President a court of law to decide the constitutionality of the Tenure of Office Act? Has he taken the powers of the third branch of government unto himself? If so, then he has the power to sit in judgment of all acts of Congress. He then can substitute his will to enforce or nullify any law he has interpreted as constitutional or not. We would no longer be a government of laws but a government of one man.

2. The defense thinks that just because Stanton was not actually removed, the President could not be guilty of violating the Tenure of Office Act! A President who has even attempted to commit a crime should not be allowed to retain his office simply because he did not succeed. Is it not reason enough that if a man who is President, entrusted with such responsibility and power, attempts to violate the law? Should he not be feared for what he may accomplish if he succeeds in the future? To keep his office merely because he did not succeed in his attempt at breaking the law or because the charges against him were not sufficient to find him guilty is to sidestep the issue of intent. If he knowingly attempted to break the law, then he has committed a high crime or misdemeanor.

3. There is certainly clear provision in Article II, Section 2 of the Constitution that the Senate is to have a major role in the selection and approval of all major appointments. The Tenure of Office Act is not contrary to the provisions of the Constitution. It merely clarifies the Constitution's intent. An appointee retains his office until the Senate approves the next appointee. The President clearly keeps his power of appointment with no threat to it, as the defense claims.

4. The President has no right to "be above the law" if he feels a law is unconstitutional. The Constitution does not allow him to make laws. He cannot repeal laws nor suspend or alter them. He can only execute or carry them out. That is his constitutional obligation. He can only wait patiently for the testing of the constitutionality by the federal court system for its final decision. Until then, he must obey and execute the letter of the law.

Defense

1. The President cannot be convicted for his order to remove Stanton because the Senate had refused to give its consent for Johnson's new appointee. No law had been violated by Johnson's attempted removal of Stanton. That there was an attempt to remove, there is no question. But how can Johnson be found guilty of removing Mr. Stanton from his office when there was no removal at all?

2. When a president knows that a law is clearly unconstitutional (particularly when he has vetoed it and Congress has passed it over his veto), then he has a right--independent of Congress or the Supreme Court--to refuse to enforce it. He has taken an oath to uphold the Constitution. He has the executive power vested in him by the Constitution to exercise his best judgment in situations in which he is placed. If he exercises that judgment honestly and faithfully, free from corrupt motives, then his actions must be judged by the electorate and not by his enemies in Congress.

3. If the President is found guilty for violating the Tenure of Office Act, then he is being removed from office for a possible "mistake in judgment," not a "high crime and misdemeanor." He is being removed for trying to preserve the power of the presidency and the separation of powers so clearly defined in the Constitution. If he is found guilty, then every President after him will be at the mercy of Congress. If he does not politically please Congress, it can pass laws to further reduce his power and impeach, convict, and remove him from office. The Tenure of Office Act was an attempt to reduce the constitutional powers of the President. Johnson is fighting to preserve and uphold the Constitution, according to his solemn oath. He is being tried for impeachment charges that are politically motivated. If Congress succeeds, the President will henceforth exist as a dependent extension of the legislative branch. When this happens, we will have parliamentary rule in this country, modeled after the British government from which we revolted. Our Constitution and unique form of government will have been subverted and destroyed.

WITNESS STATEMENTS

Witnesses for the Prosecution

George W. Karsner - I am from the great state of Delaware. I came to Washington, D.C., to see the mail people about a contract for the mail delivery in my home town of New Castle. Really nice place, New Castle. I figured that since General Lorenzo Thomas was a native Delawarean, and a new secretary of war, I just ought to pop in and tell him "Howdy" from the folks back home and congratulate him. Besides, for such a small state we got to stick together and get to know one another when the opportunity arises. So I called on him on February 21, 1868.

By golly, if he didn't invite me to go along with him to the White House reception being held that afternoon by the President. Of course I wasn't going to pass up a chance to meet the President, even though he isn't from Delaware.

While we were waiting in the reception line, we began discussing what Thomas would do if Stanton refused to leave the War Department. General Thomas said that he would probably have to call upon General Grant to send in some troops to remove Stanton. I said, "I guess you really want to get rid of Stanton, to use the army, I mean." I asked General Thomas if he didn't think that kind of placed the President outside of the law, that Tenure of Office Act law, if you used the army like that. He said, "That's the way the President wants it and that's the way *I* want it." So I said, "General, never forget--the eyes of Delaware are upon you."

Ed Farwell - I am a newspaperman assigned to travel with the President when he is going outside of Washington. I covered his speeches in 1866 and wrote particularly good articles for my paper on the speeches he gave in Cleveland and St. Louis. It is hard to get down every word, but with my shorthand I got most of it. It was surely clear he didn't much care for Congress, nor did he respect them, kinda like he felt above them or something. (Attorneys for the prosecution should introduce into evidence the articles, either those on Handout 22-6 or ones written by student playing Farwell. Farwell should read articles into the record.)

Colonel William H. Emory - I am in command of the District of Washington, so I have control over the army attachment stationed here. In September 1867, the President called me to the White House and asked me about the strength of the troops. I reported the location of each post and the commanding officer of each post, as best as I could remember. He was really agitated and kept asking me if we shouldn't have more troops in Washington. I said that the city must have at all times a brigade of infantry, a battery of artillery, and a squadron of cavalry. We had that. The President called me to the White House again on February 22, 1868. He wanted to know if I had followed his instructions and ordered more troops in the capital. I told him that there were fewer troops than there had been in September. I told him because of the Army Appropriation Act I couldn't accept orders from anybody but General Grant, not even the President. He got even angrier and asked if I didn't recognize him as Commander-in-Chief as the Constitution provided in Article II. The President seemed to want an army under his command. "And why in peacetime?" I asked myself.

Witnesses for the Defense

Adjutant General Lorenzo Thomas - I was called into the President's office early in February. President Johnson asked me if I had the courage to help him test the constitutionality of the Tenure of Office Act by being appointed secretary of war, even though Stanton's resignation had not been offered nor approved by the Senate. The President said he firmly believed that the Tenure of Office Act was unconstitutional and would be found to be so if we could get it into the court system. He asked me, "Can you remain firm in your commitment to stay in the office, no matter what happens?" I told him that I was a brave man and he could count on me. He pointed out that he had appointed General Grant in August 1867, thinking that he would remain firm, but that General Grant resigned when the Senate asked him to do so. Grant had been appointed while the Senate was in recess. Johnson said that it would take a very courageous man at this point and that he had naturally thought of me. I told him that I was his man and would gladly accept the appointment. He reminded me that the Senate was in session.

On February 20 I was summoned to the White House, where the appointment was made. The President gave me a letter to deliver to the War Department, informing Stanton that he was dismissed. I took along an assistant adjutant general, General Williams, as a witness. Stanton cordially greeted me and I then handed him his letter, which was the President's order that he was removed from the office of secretary of war. I left briefly to have a copy made for General Grant, General of the Army. When I returned, Stanton handed me a letter. (Attorneys for the defense should introduce into evidence the letter on Handout 22-6. Thomas should read the letter into the record.)

I returned to the White House, where the President asked me to await further instructions. I later met a man from my home state of Delaware. He seemed like a fine fellow, so I asked him to accompany me to a reception at the White House, where we had a very nice afternoon.

The next morning, February 21, I was awakened by a knock on my door at 8:00 a.m. It was the U.S. Marshall for the District of Columbia, two assistant marshalls, and a constable, who then put me under arrest. And before I had had my breakfast! I asked to be first taken to the White House so I could inform the President. The President assured me he would provide lawyers and any bail that was necessary. He seemed genuinely delighted.

I was then taken to the District Municipal Court, arraigned before Judge Carter on a complaint signed by Stanton accusing me of "willfully and maliciously trying to take possession of the secretary of war's office." I pled not guilty and bail was set at $5,000, which was promptly paid. After I had been in a cell but a short time, I was released.

I discovered later that the President had not wanted bail to be posted but rather wanted to have a writ of habeas corpus drawn up, which would have immediately required an appearance before a judge. As it was, it didn't work out that way.

Walter Cox - I am a Washington lawyer with expertise in constitutional law. I was retained by the President to defend General Thomas after Stanton had him arrested. I had asked the judge to put General Thomas in a cell so that a writ of habeas corpus could be drawn up. It was our intention to immediately go to trial to bring into question the constitutionality of the Tenure of Office Act. Thomas was put in a cell, but the judge was clearly told not to detain Thomas. Thomas was released on bail; there was no trial nor hearing.

My opinion as a constitutional lawyer is that the Tenure of Office Act is unconstitutional. The appointment powers of the President are clearly undermined by this act. Article II, Section 2 of the Constitution says, "...and he shall nominate, and with the advice and consent of the Senate, shall appoint ambassadors..., judges of the Supreme Court, and all Officers of the United States..." It then goes on to suggest that Congress may by law vest appointive powers in the President alone for certain named offices including "Heads of Departments." In Section 2 it is suggested that the President rely on the "opinions of these principal officers of the executive department." The Cabinet must help, not hinder, the orderly functioning of the executive branch. A President cannot rely on the opinions of his department heads if they are at cross-purposes with him. The President must have the right to dismiss any officer who is obstructing the proper functions of his responsibilities and find another officer with whom he can work. The Senate has the right to approve or give its consent, but it does not have the power to remove the right from the President to dismiss unruly officers of his Cabinet.

If the Tenure of Office Act is allowed to exist, it will surely change the nature of our government. The executive branch will be subject to the political whims of the legislative branch. Whenever a President's political or governmental policies conflict with those of the Congress, Congress can simply pass a law to limit the power of the President. If laws like these are not tested by the judicial branch, they will be allowed to stand as law. The President could then be impeached, convicted, and removed from office. And for what? For disagreeing with Congress. The Presidency becomes an extension of the legislative branch. The separation of powers and the system of checks and balances will come to an end. The Constitution will be dead.

Gideon Welles, Secretary of Navy - I was appointed by President Lincoln to serve as secretary of the navy at the same time that Stanton was appointed secretary of war. Last February 21, Johnson called a Cabinet meeting. He announced that Thomas had delivered the removal papers to Stanton. The Cabinet members all agreed that Stanton had to go. It had been impossible for the President to work with him.

When Congress passed the Tenure of Office Act, it was sent to the President for his signature or veto. After reading the act to us, he asked us for our advice. All Cabinet members, including Stanton, agreed that it was unconstitutional, and we advised Johnson to veto it. Johnson reminded us that he was no lawyer and wanted help in writing the veto message. Attorney General Stanberry would normally have written it, but he was busy with a number of cases then before the Supreme Court. The Cabinet then chose two of the best lawyers among us to write the veto. They agreed to do so by basing the veto message on the unconstitutionality of the act. The men who wrote the veto were Secretary of State William Seward and Secretary of War Edwin M. Stanton.

EXHIBIT A

THE ST. LOUIS JOURNAL May 5, 1867

PRESIDENT SPEAKS OF DICTATORSHIP

Cleveland, Ohio
Edward Farwell, Reporting

The President arrived in Cleveland Monday morning at approximately 8:30am. He then attended a press conference which lasted without a break from 9:15am until 1:30pm.

In the press conference, the President stated, "Since the Tenure of Office Act passed in March, Congress has been taking any means to take away my power." When asked, "Will you veto acts to limit your power?", he answered, "Yes." He was then asked, "So, in other words you are starting a dictatorship against the Congress of the United States?" He answered, "If I really wanted to be a dictator, all I'd have to do is call on the army."

Most of the people attending the conference couldn't believe the President's response. The conference ended, and the President headed back to Washington, D.C.

THE ST. LOUIS JOURNAL July 18,1867

PRESIDENT SLANDERS CONGRESS RAGES OVER TENURE ACT

St. Louis, Missouri
Edward Farwell, Reporting

On Monday July 17th, the President arrived at the Ambassador Hilton in St. Louis. He then stood on the patio and answered reporters' questions. When the question of the Tenure Act came up as being constitutional he became furious. "I believe the Tenure Act is unconstitutional and is degrading to the office of the presidency of the United States. I will not allow the radicals of this nation to diminish the power of the presidency so low as a piece of dirt, and I refuse to hold this position with such radical movements going on."

After the questioning, the President returned to his room for a brief rest and then went for a prime rib dinner at the Crystal Room of the Hilton. After dinner he returned to his room for the night.

The following morning he awoke and ate breakfast in his room, then started for the train station still in a furious rage at the reporters' questioning of the Tenure Act the previous day.

(Articles written by students at Los Alamos High School)

EXHIBIT B

War Department
Feb. 21, 1868

Major General Lorenzo Thomas, Adjutant General
Sir: I am informed that you presume to issue orders as secretary of war ad interim. Such conduct and orders are illegal, and you are hereby commanded to abstain from issuing any orders other than in your capacity as Adjutant General of the Army.

Your obedient servant,
Edwin M. Stanton
Secretary of War

23. THE GENERAL ALLOTMENT ACT OF 1887 (DAWES ACT): SENATE COMMITTEE HEARING SIMULATION

Introduction:

More than once in U.S. history, federal policy toward American Indians has been directed at breaking up reservations, thereby bringing Indians into the mainstream by eliminating tribal unity and traditional ways of life. In 1887, Senator Henry Dawes sponsored the General Allotment Act, which proposed to divide Indian lands into individual holdings. This activity is a simulation of a hearing before the Senate Indian Committee, which is called to hear testimony for and against allotment of Indian lands. Witnesses who testify must try to convince the Senate committee of their points of view; the committee must then vote on whether to recommend passage of the bill in the Senate. This activity can be used during a unit on westward expansion or U.S. Indian policy.

Objectives:

1. To develop understanding of the issues and controversies surrounding the post-Civil War Indian policy of allotment.

2. To create recognition of the political and cultural conflicts existing between Indians and the U.S. government.

3. To develop understanding of the nature of the trust relationship and the government's attempts to alter Indians' special status.

4. To develop understanding of the function of congressional committees in the legislative process.

5. To allow students to experience the role of pressure groups in the legislative process.

Level: Grade 11 and above

Time: Three class periods and out-of-class preparation

Materials: Copies of Handouts 23-1, 23-2, and 23-7 for all students; sufficient copies of remaining handouts for students assigned to related roles; name tags for role players

Procedure:

1. Distribute Handouts 23-1 and 23-2. Read through the background information with the class and explain that students will enact a Senate committee hearing to consider the General Allotment Act.

2. Read through the role descriptions on Handout 23-2. Explain what is required of the witnesses, Senate committee members, and reporters (reporters should be selected on the basis of ability to listen, take notes, and write). Either select students to play roles or ask for

volunteers. Explain that the rest of the class will act as observers, taking notes and giving a separate decision from that of the committee.

3. Distribute Handout 23-3 to Senate committee members, Handout 23-4 to witnesses and observers, Handout 23-5 to reporters, and Handout 23-6 to observers.

4. During preparation time, have committee members prepare questions for witnesses. Have witnesses prepare their presentations. Have observers review the materials they have been given. Work with individuals and have students complete preparations as homework.

5. Prior to class on the second day, set up the room as indicated in the diagram on Handout 23-2. Conduct the hearing, allowing five to seven minutes for each witness.

6. Complete the hearing on the third day. Then allow the Senate committee ten minutes to deliberate on their recommendations to the full Senate. During this time, ask all observers to write out their decisions and their reasoning.

7. Have the chairperson announce the committee's decision. Then ask observers to give their decisions and discuss them.

8. Discuss the following questions:

--What information most influenced the decision of the committee? The observers?

--Did the Indians have sufficient or adequate representation?

--What is the purpose of a legislative committee?

--Are pressure or interest groups necessary in the legislative process?

--Do you think it is fair to have members of a Senate committee, none of whom are Indians, make a decision that will have a profound effect on the lives of Indians?

--Do you agree or disagree with the statement: The General Allotment Act of 1887 was one "of...the most destructive pieces of Indian legislation ever passed by Congress"?

9. Distribute Handout 23-7 or read it aloud to the class to inform students of the outcome of the passage of the Dawes Act.

10. The day after the simulation is completed, have the newspaper reporters read their articles to the class, or duplicate them for distribution. Discuss the biases that the articles show.

GENERAL ALLOTMENT ACT OF 1887 (DAWES ACT)

Background

From the start of colonization of the New World, white settlers believed Indians must be "civilized" and converted to Christianity, with the ultimate goal of assimilation into white society. The colonists had no respect for the Indian cultures; they considered Indians heathen and barbaric. The Indians were at war periodically with the colonists, as the colonists pushed the wilderness farther and farther into the continent, destroying the Indians' way of life. Mutual distrust became the traditional method of dealing with one another.

After independence, U.S. Indian policy was directed toward "civilizing" the Indians, with small attempts made at government expense. Mission schools were tried with varying success. Indians were subjected to corrupt practices and broken promises and treaties as a result.

Reform groups after the Civil War were sincerely concerned for the welfare of Indians. They believed that the only means to fair treatment for the Indians was through their becoming "white" and entering the American mainstream, leaving behind their Indian values and ways of life. Not only would they become "white" in religion, but in dress, culture, and thinking.

Indian wars, brutal from both sides, had further divided the two peoples, with the Indian way of life becoming more incompatible with that of the expanding American nation. Indians were placed on reservations, making them dependent on reservation agents for food. Reservation schools and distant boarding schools were established.

The various Indian groups still refused to become like the whites. The only solution in the eyes of the reformers and the opportunists, the honest and dishonest, government officials and average citizens, was allotment. Under this plan, reservation lands held in common by the tribes would be divided and distributed to individual families, thus destroying the unity of tribes. It was believed that individual ownership of property, with the hard work required and the sense of pride it instills, would give the incentive to become "white" in name if not in fact. Joint tribal ownership of land was destructive of these goals because the closeness and commonalities shared by joint ownership reinforced Indian traditions and customs.

Even though a small effort at land allotment had been tried and had failed with some Kansas tribes in the 1850s, it was believed that the shortcomings of that attempt could be corrected. In 1863 the Homestead Law was passed in Congress, giving free land to anyone who would homestead 160 acres, improve and live upon the land. This opportunity was offered to the Indians in 1875, but few were interested. After 1875, allotment bills were brought before every session of Congress without success. Success finally came in 1887, when Henry Dawes of the Senate Indian committee sponsored the bill. It became known that reservation lands left over after the Indians of a particular reservation had received their allotments would be sold to white settlers. The necessary votes for passage of the bill were assured by this new motivation.

It should be stressed that other than the Indians themselves, the only opponents of the bill were many of the Indian agents.

PROVISIONS OF THE ACT

A. Reservation lands will be divided and allotted (distributed) in this manner:
   1. Each head of household will receive 160 acres.
   2. Each non-head of household will receive 80 acres. (Unmarried over 18 in age)

B. This land will be held in trust by the U.S. government for 25 years, during which time the allotment owner cannot sell, lease, mortgage, or give away his land without the approval of federal administrators.

C. At the end of the trust period or when the Secretary of the Interior determines that an Indian allottee is competent to manage his own affairs, these restrictions will be removed with the land being owned by the Indian in the absolute sense.

D. Lands not allotted will be declared surplus and will be open for settlement or development by non-Indians.

E. If an individual refuses to make a selection, representatives of the U.S. government will make the selection for that individual.

ROLES FOR SENATE COMMITTEE HEARING

Chairperson of the Senate Committee on Indian Affairs and six committee members - The committee members are Senators, who will hear testimony and vote on whether to recommend passage of the bill in the full Senate.

Commissioner of Indian Affairs - He/she is in charge of the Bureau of Indian Affairs. As a government official, he/she feels that allotment is in the best interests of the Indians as well as the nation as a whole.

Agent for the Plains Indians - He/she has been living with Plains tribes as the Indian agent. In this role he/she provides food to the reservation tribes and represents the Indian needs to the federal government. He/she has observed that no change has taken place in the ways the Plains Indians conduct their lives. He/she feels they are not ready for allotment and should remain wards of the government much longer.

Agent for the Pueblo Indians - He/she is in favor of allotment. He/she feels that since the Pueblos have been farming and irrigating for centuries, there should be no difficulty in allotting their lands. It will break up their pagan dances and keep their traditions from being reinforced by the closeness of pueblo life.

U.S. Geological Survey Expert - He/she has been a member of the survey team that has mapped much of the West. He is acquainted with John Wesley Powell, another member. He believes that land beyond the 100th meridian (the geographer's great circle that passes through both poles in a north-south direction and measures 100° longitude) is too arid for farming without proper irrigation, something which most Indians know nothing about. Therefore, allotment is doomed to failure in the areas beyond the 100th meridian, since Indians will not be able to farm successfully on this land.

Colonel in the U.S. Army - He has been an Indian fighter in the West ever since the Civil War ended. He has little respect for Indians, having witnessed the brutality of the Indian Wars in the West. He is all for allotment.

Missionary to the Indians - He/she, like other missionaries, is a strong advocate of allotment. Missionary schools have had uneven success in "civilizing" the Indians because of the youngsters' continued exposure to old Indian ways.

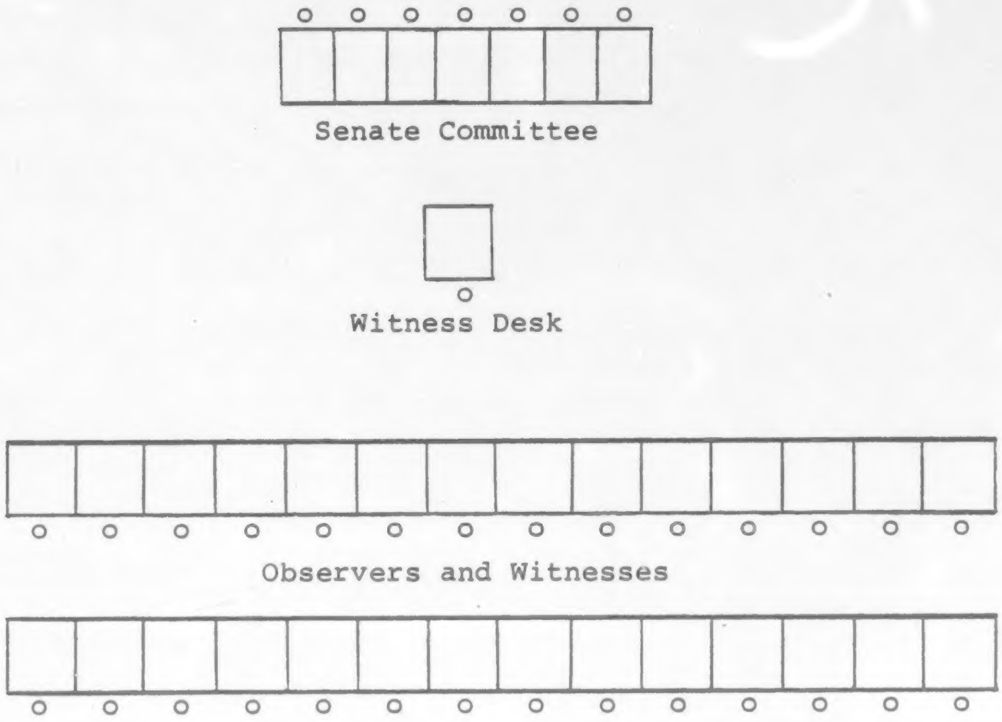
Tiwa Indian from Taos Pueblo - He/she is trying to prevent the destruction of the close community life of all the Pueblo Indians. He/she will try to show the benefits of the Pueblo life, not only to the Indians but to the nation. This way of life would surely be destroyed if allotment were to take place.

Lone Wolf, Kiowa Chief and Representative of the Plains Indians - Allotment is a terrible thing for the Plains Indians, and Lone Wolf will explain why it is incompatible with tribes who have been hunters for as long as their tribal memory can record. They cannot become farmers and survive.

Reporter for a Conservative Newspaper - He/she is unsympathetic to the Indians and very favorable to the Dawes Act.

Reporter for a Liberal Newspaper - He/she is sympathetic to the maintenance of the Indians' way of life and against the disruption that would be caused by allotment.

SUGGESTED SETTING FOR THE ROOM



INSTRUCTIONS TO THE SENATE COMMITTEE ON INDIAN AFFAIRS

The year is 1886. You are on the Senate Indian Committee which will hear testimony of witnesses and then recommend to the entire Senate whether or not to pass the General Allotment Act. Little progress has been made in the 1880s in absorbing the Indians into the American way of life. The Indians still retain their tribal identities and customs because they have been isolated on reservations apart from whites. You must decide if the Allotment Act is in the best interests of the Indians and the U.S. government. You will listen to the testimony of each witness, take notes, and then ask questions.

Chairperson

The chairperson calls the meeting to order and asks for the witnesses to present testimony in the order listed. Allow between five and seven minutes for testimony and questions. After each witness concludes his/her formal testimony, ask your fellow committee members if they have any questions to ask the witness. You as chairperson may also ask questions. After all the witnesses have spoken, adjourn the hearing and find a quiet place where you and the committee can decide the merits of the act. When you reach a decision, announce the decision either to recommend the act for full Senate consideration or to reject the act.

Committee Members

Take notes as each witness testifies. Keep lists of reasons for and against allotment as you hear testimony. Prepare questions to ask each witness pertaining to his/her testimony and perceptions of the act. Don't hesitate to ask probing questions. Your job is to try to get as much information as possible about the underlying reasons for the different positions.

After you have heard from all the witnesses, the committee will discuss and then vote on whether to recommend the act to the entire Senate for its consideration. The Senate, as a rule, tends to follow a committee's recommendation. Therefore, your decision will strongly influence, if not determine, the act's passage or rejection. So give serious thought to the consequences of your committee's decision.

Sample Questions

1. As a member of a Plains tribe, why are you against the idea of farming?

2. Your pueblo has been farming for centuries. Under allotment, you will be responsible only to your family and not to all the rest of the pueblo. Does it matter that you will be farming as individuals rather than as a community?

3. There is a great deal of land left in this country. Why is there a need to open up the unallotted Indian land to white settlers? Why can't that surplus land be left to the tribe to be held in trust in case the tribal population expands and the land is needed for further homesteaders among the tribe?

4. Commissioner, you say that the only way to "civilize" the Indians is to give them 160 acres to farm as individual families. Why is this the key to "civilizing" Indians?

5. As an Indian agent, you are responsible both to the federal government and the tribe to which you provide federal services spelled out by treaty. What has been your experience in getting the (Pueblo or Plains) Indians into the mainstream of American society?

6. As a missionary, you have lived closely with the Indians (Pueblo or Plains). Are they accepting white ways any more rapidly than they have been? Are they becoming good Christians?

7. Why is there a need to have the Indians accept white ways? Can't the Indians be allowed to keep their traditional culture and way of life?

8. Hasn't the failure of Indian policy been caused by the failure of the U.S. government to live up to its promises of adequate provisions? Don't you think that if the government could find a way to carry out its part, the problems of off-reservation hunting and war could be eliminated?

9. Isn't the real reason why you support allotment the fact that you want good Indian lands available for white settlement?

INSTRUCTIONS TO THE WITNESSES

You are testifying for your particular interest group. The group you are representing has a vital interest in either getting this act passed or in keeping it from being passed. You must be as convincing as possible in your testimony. Be ready to answer the committee's questions on the spot.

Prepare your testimony from the information given below. Be prepared to talk for three to five minutes. Try to be as persuasive and sincere as possible. Avoid reading the testimony. Maintain eye contact with committee members. Feel free to use the phrases or statements provided or change them for maximum effectiveness.

Commissioner of Indian Affairs

You are the head of the Bureau of Indian Affairs. Your responsibility to the Indians is to determine what is best for them. You believe in what an earlier commissioner, a Seneca Indian himself, defined as the status of the Indians' relationship with the federal government: "They are held to be wards of the government, and the only titles the law concedes to them, to the land they occupy or claim is a mere possessory one..." Congress can legislate directly for the tribes, and you are the one to help interpret their needs for Congress.

You believe that reservations should be eliminated. This will force the Indians to become "individualized" rather than members of a tribe. The tribal traditions will and must be destroyed. Then and only then will Indians conform to white ways. Farming is the backbone of the American way of life. Farm owners must work hard; therefore, reservation Indians will become a part of the American tradition of hard work. To develop a strong desire to work and become an individual in a competitive society, the Indians must be made responsible for property. Even if they lose it later on, they will learn the value of land and will want to acquire more in the process.

Some critics say the U.S. government has treaties with the various tribes guaranteeing their land. You believe that treaties with the Indians have been an obstacle to an effective policy. A treaty implies equality between the parties entering into the treaty negotiations. That is clearly not the case, since the Indians are wards of the government. We must get rid of the treaty as a means of dealing with the Indians. It is clear that progress cannot be made unless the Indians are forced to obey the wishes of the government. We know what is best for them. Like temperamental children, they want their own way when that way is not in their best interests.

Agent for the Plains Indians

As agent to the Great Sioux Reservation, you have witnessed the recent wars between the U.S. Army and various Plains tribes. There is much tension on the reservation. The treaties made with the U.S. government promised yearly provisions of food and clothing. The provisions often do not get to the reservation due to fraud on the part of officials, who sell them or take them for themselves. As a result, Indians often starve. To find food, Indians are forced to leave the reservation to hunt in the old manner. They often run into angry whites, who shoot at them. The Indians retaliate and another "incident" is created, with the Plains Indians being blamed for it. The government has failed in its promises to Indians of schools, adequate food and clothing.

Indians have had to retain their old ways simply to survive. They are not ready for allotment. Why should they be? They don't even know how to farm. Why can't they be taught to be ranchers, a way of life much more closely tied to the old hunting tradition? Let the tribe as a whole become cattle ranchers using the entire reservation as grazing lands to be held in common. Let the government make a real effort to live up to its treaty obligations with real help in the form of instruction, schools, food that is decent and plentiful. Gradually, the Indians will begin adopting white ways. They are most assuredly not ready at this time. If their land is allotted, they will surely not survive. Allotment would be a disaster for the Plains Indians.

Agent for the Pueblo Indians

You are Indian agent for the Northern Pueblos of New Mexico Territory. You firmly believe that allotment must take place for the welfare of the Pueblos. Much has been tried in the past to bring progress to the Pueblos but with little success; they are still engaged in subsistence farming with irrigation.

Boarding schools have been established in Santa Fe and Albuquerque. Mission schools have been established by the Catholics, Presbyterians, and Lutherans. Educational institutions are one of the strongest means of weakening tribal ties; however, this is not as effective as it could be because the close pueblo community life reinforces traditions and weakens newly learned ways. During summer vacations, the children begin to revert back to the old ways.

Some of the Indian customs that must be destroyed are the pagan dances and rituals that consume so much of their time. Even when these are discouraged, the Indians continue their old practices in secret.

The close-knit pueblo community allows custom and tradition to be reinforced every day. This sense of community must be destroyed. When each family lives separately on 160 acres, Indians will soon think of themselves more as individuals and not as part of the pueblo family. Each family, once weaned from dependence on the community, will accept white ways more readily.

Their individual and collective poverty will be things of the past. Their adobe mud huts can be replaced with wood structures of American style. Their pagan practices in the kivas will no longer have any meaning. The Christian Church will become the focus for their spiritual life. Instead of pagan dances, they can be taught the Virginia reel and other American dances. Most importantly, English will become their first language, rather than Tiwa or another Indian language. They will be able to function better in society and will no longer be disadvantaged.

It will be easy for Pueblos to make the transition to allotment. They have already been farming and using irrigation in a most effective way for hundreds of years. Their farming methods, however, are primitive. With new technology and new methods that American farmers are using, each Indian farmer will produce a surplus that can be sold on the national market. With the money received for these crops, the farmer can buy luxuries that most white people enjoy. For these reasons, passage of the General Allotment Act is necessary.

Member of the U.S. Geological Survey Team in the West

You surveyed much of the West and are well acquainted with the country "beyond the 100th Meridian" (this encompasses part of Nebraska, the Dakotas, Kansas, Oklahoma, West Texas, Colorado, New Mexico, Wyoming, Utah, Nevada, Arizona). Because of its lack of rainfall, this area is known as the Great American Desert. Generally speaking, these lands receive less than 20 inches of rainfall a year. Twenty inches is the minimum for unaided agriculture. Major John Wesley Powell, famed member of the U.S.G.S. team that surveyed the Grand Canyon, reported in 1871 that the 100th meridian roughly indicates a line separating the area of sufficient rainfall for farming from the area requiring special techniques such as dry land farming and irrigation.

You believe the allotment based on 160 acres is a mistake. To allocate the same amount of land for all Indians without regard for the region or locale in which they live is ridiculous. In the eastern half of the continent, where there is adequate rainfall, Indians could make a living on 160 acres. West of the 100th meridian, they will starve. In this area, 320 acres is probably not sufficient even for ranching, to which the area is much better suited; it is even marginal grazing land. This act does not take into consideration the lack of farming experience of Indians in the West (with the exception of the Pueblo). The harsh conditions would challenge the best of farmers. Inexperienced farmers, such as the Plains Indians, will face disaster. The Dawes Act must not be passed as it is now presented.

Colonel of the U.S. Army, Indian Fighter

You fought in the Civil War, but the toughest fighting you have ever seen was against the Indians in the West. The only way to keep the Indians off the warpath permanently is to defeat them completely by destroying their tribal identities. Force them on to 160 acres and keep them there. They are still savages, and their spirits will never be broken until they are completely under the control of the federal government on an individual basis. Destroy the tribes and you will create individuals capable of being civilized.

Treaties are a mistake and are useless. A treaty implies that an Indian tribe is equal with the United States. Even if it were true, which it is ridiculous to consider, the tribes are made up of clans and each acts separately. There is no way to make all the clans live by a treaty. Therefore, the only way to control Indians is to allot their lands and make them live as individuals.

You have been involved with fighting the Sioux for more than 25 years, and they are still a problem. The Apache, Nez Perce, Ponca, Utes, and Navajo have been involved in war with the Army during the same period of time. In 1868 the Commissioner of Indian Affairs estimated that the cost of Indians killed was running around $1,000,000 each. Bring peace to the whites. Give the Indians their allotment and then open up the surplus to white settlers. Thousands of peaceful immigrants into our country are anxious to turn useless Indian land into crop and grazing lands providing the foodstuffs for a growing nation and for a hungry world. The drain on the federal treasury to kill them can be used to make whites out of them. The Dawes Act should be passed.

Missionary to the Indians

You work in a mission school for Plains Indians. You have lived among various tribes from the time you were a child; you speak several Indian languages. Even your parents were missionaries. You have witnessed Indians' scalping whites and whites killing Indians in the Plains Wars of the 1860s and 1870s. There can be no civilizing of the Indians until they become Christians. They will become true Christians in fact and not just in name only after they have been forced to give up their pagan religions, which only serve to undermine Christianity and any civilizing influence.

All Indian children should be sent to mission schools, where they will grow up speaking English as a first language. They will dress like American children and learn farming techniques. Mission schools will raise them in the Christian way, with full familiarity of the Bible and God's word.

To bring all of this about, Indians need to live next to white settlers who can show them how to farm, how to increase their herds, how to live like Americans and prosper. Through allotment, they will understand the pride of private ownership of land, home, and possessions. The extra land sold to white settlers will create a new kind of community for the Indian, who can begin to be peaceful neighbors with white brethern. Allotment is the only way to achieve this. Then the Indian can truly know the civilizing influence of the Christian Church as well.

Tiwa Indian from Taos Pueblo

Your people came into this land hundreds of years ago. They are a people of ancient origin in this land. Your ways, so your legends tell you, have given your people strength, allowing you to survive the worst droughts, raids, and disasters. You have endured.

Each pueblo is a community that gives support and help to each member. Members share in dances to bring a good planting, to give a good harvest, to rejoice when there is plenty. These dances are not pagan dances, but a prayer to the same Great Spirit that whites pray to. Your collective prayers are in the form of dances in the openness, where you are in touch with the skies above you, the ground beneath you, and the wind that surrounds you. These prayers are the same as white prayers inside a house closed off from the natural world where the Great Spirit lives. You pray together as whites do because you believe the voices of many are heard better than the quiet voice of one. You are many people who are one not one of many people. The community or pueblo is what makes each individual strong and able; your people live close together to share their strength with each other. If you are separated onto 160-acre plots of land, your people will be separated from their source of strength.

Just as your customs and traditions seem strange to whites, so do white ways seem strange to you. Many foreigners come from faraway lands and are allowed to become good Americans. Yet they speak strange sounds. Your people want to be good Americans, too. Why cannot the Pueblo Indians also speak Tiwa and English? Your accent is no stranger than that of the other new Americans. Is it the language that makes the government want to divide you up into little farms? Because you too speak another language?

Your people have a long history of peace with the American nation. You have caused no warfare. You have tried to farm your lands and be good people. Why must the government allot your lands? It will mean the end of all that is sacred to your people and to that which gives you your strength.

Lone Wolf, Chief of the Kiowas and Spokesman for the Plains Indians

Kiowas are hunters and have been for hundreds of years. You have hunted the buffalo across the plains, knowing no limits to your land except for Father Sky and Mother Earth. Then the whites came. Now you are being asked to live confined on 160 acres and become farmers. Farming is frowned upon because it is woman's work in the lesser tribes. But you are a hunting people. It takes no bravery to be a farmer! You are not farmers. You can never become farmers. So why must you give up being hunters with the tribal lands held in common? Now there is game that runs on the reservation. If you fence it up, there can be no game.

You have been told that the President and Congress have a law that says laws are made for the "protection of Indians." This Dawes Act does not protect your people. Without tribal lands, where can you hunt? With white settlers moving on to your lands, where can you live? You have no protection!

What about the treaties that the U.S. government made with you? In 1867 the government in Washington made the Treaty of Medicine Lodge. They promised that if your people would move on to a reservation, no Kiowa or Comanche lands could be sold without approval by three-fourths of the adult male members of the tribe. Now the Dawes Act says that each male must choose 160 acres. Whatever is left over of the tribal lands will be sold to white settlers. What about the treaty? Three-quarters of your males are not giving their consent to sell your land, and yet the government threatens to sell it.

In the Treaty of Medicine Lodge, the government promised to supply your people with food if you moved onto the reservation. Your people starve because the food promised is never delivered. They have to go off the reservation sometimes to hunt in order to feed their children. Where are the people who made the promises and signed the treaty? Do white leaders lie? Whites say they want to civilize your people. Is breaking treaties a civilized act? Is it civilized to promise food and then not deliver it? If lies and corruption are part of white civilization, you want no part of it.

INSTRUCTIONS TO THE NEWSPAPER REPORTERS

You both represent newspapers that have clear political biases. You are to take notes as each witness testifies. Write down facts and ideas as they are presented. Keep in mind the points of view of each witness. You will be expected to take your notes and write an article that reflects the bias of your newspaper. The reporter for the conservative newspaper will support allotment, slanting everything in favor of this position. The liberal reporter will be against allotment, sympathetic to the testimony against allotment and in favor of the Indian point of view. You want the class to see how differently the same event and set of facts can be reported based on the bias or slant of the reporter.

The articles should be ready for class the day after the decision to recommend passage or rejection of the act has been announced. Be prepared to read your article to the class and discuss how it was written.

INSTRUCTIONS TO THE OBSERVERS

Use this form to take notes on the testimony of each witness. Try to think about what is being said that makes you either sympathetic or unsympathetic. You will be asked to tell whether you would vote for or against passage of the Dawes Act. Be ready to explain why, giving specific reasons about particular facts that helped to influence your decision.

1. Commissioner of Indian Affairs: ____________________

2. Agent for the Plains Indians: ____________________

3. Agent for the Pueblo Indians: ____________________

4. U.S. Geological Survey Expert: ____________________

5. Colonel in the U.S. Army: ____________________

6. Missionary to the Indians: ______

7. Tiwa Indian from Taos Pueblo: ______

8. Lone Wolf, Kiowa Chief and Representative of the Plains Tribe: ______

Your Decision: ______

Your Reasons: ______

POSTSCRIPT

The Dawes Act passed both houses of Congress and became law. The famous Kiowa chief Lone Wolf did go to Washington to testify but was too late to be heard.

The Five Civilized Tribes (Cherokee, Chickasaw, Choctaw, Creed, and Seminole) who had been forcibly removed into Indian Territory in Oklahoma in the 1830s were temporarily exempt from the act. In 1889, through yet another act, their land was allotted as well.

Many of the Pueblo Indians of the Southwest escaped allotment. Later attempts were made in the 1920s, but these attempts failed. With some exceptions, the Pueblo Indians were able to keep their lands.

In the 1930s, Indian Commissioner John Collier got Congress to reverse the Dawes Act. He estimated that Indian land holdings throughout the nation were cut from 138,000,000 acres in 1887 to 48,000,000 in 1934 as a result of the act. All of the lost acreage (90,000,000 acres guaranteed by the treaties) went to white settlers. It has been said that the Dawes Act was "one of the greatest mistakes ever made by the government."

24. LABOR'S STRUGGLE FOR LEGAL RECOGNITION

Introduction:

The seesaw course of labor's struggle for legal recognition unfolds in this activity. In small groups, students examine and recreate episodes of unrest in a 100-year span of labor history. Students examine changing Supreme Court interpretations of state and federal power to enact labor legislation and also explore the social and economic forces that influenced such legislation. This activity can be used when studying industrialization. An attorney specializing in labor law would be a helpful resource person to provide depth in debriefing the activity.

Objectives:

1. To increase understanding of the economic and social conditions leading to labor legislation.

2. To develop understanding of the nature of labor unrest in the late 19th and early 20th century.

3. To prompt recognition of the role of the Supreme Court in interpreting state and federal power to enact labor legislation.

4. To enhance reading, interpretation, critical thinking, group process, and chronology skills.

Level: Grade 11 and above

Time: Three or more class periods

Materials: Copies of Handout 24-1 for all students; one copy each of Handout 24-2 through Handout 24-9

Procedure:

1. Distribute Handout 24-1. Read and discuss the background and chronology. Be sure students understand the relationship among state legislatures, Congress, and the Supreme Court with respect to labor legislation.

2. Divide the class into seven or eight groups of three to four students each. Assign one of the episodes described on Handouts 24-2 through 24-9 to each group.

3. Have the groups read through their episodes. Each group is to make a presentation of their episode to the class, using one of the following mechanisms:

--A skit of the events described in their episode. Students can make props, use signs to identify characteris, and wear costumes. They will need to tap their creative and dramatic abilities to make the episode understandable and interesting to the class.

--A report on the episode. If library resources are available, it is recommended that students do research beyond what is provided (a maximum of three students is recommended for a report).

--A group-prepared mural or collage. The final piece will be interpreted and explained to the class.

4. In preparing their presentations, all groups must address the following questions, which should be written on the chalkboard:

--What were the workers in your episode fighting for?

--What was the legal status of each of the following when your episode took place?

a. The right of workers to organize
b. The right of unions to exist
c. The right to strike
d. Minimum wage
e. Maximum workweek
f. The right to bargain collectively

--What gains or defeats resulted from the events of your episode?

5. Allow at least one class period for preparation.

6. Have groups give presentations. If a resource attorney is used, have him/her observe the presentations and participate in the discussion.

7. Debrief the activity using the following questions:

--Do you think the demands of the workers in each of the episodes were justified? Why or why not?

--Do you think there were alternatives to strikes to accomplish what the workers wanted?

--Labor unrest often resulted in violence. In the episodes in which it occurred, what was the cause? Could violence have been avoided?

--When did the Supreme Court finally allow Congress to enact labor legislation? What were the reasons for this change in interpretation of congressional powers?

LABOR'S STRUGGLE FOR LEGAL RECOGNITION

Background

Before the Civil War, the United States was a nation of farmers supported by some manufacturing. This changed in the decades that followed. The demand for more and better products spurred the growth of inventions and industries. Because of vast railway networks, national markets opened.

Corporations, the new basic unit of American industry, began to centralize the control of production and distribution for a national market. This created numerous, but impersonal, specialized jobs. Millions of immigrants poured into the country, competing with Americans for newly created industrial jobs, thereby lowering wages. Competition among corporations to reduce the costs of goods resulted in lower wages and longer hours for workers.

As labor conditions worsened, many workers recognized the need to organize themselves, form unions, and seek recognition of the rights of workers to bargain with corporations. Resistance to this move came from both corporations and governmental institutions. When unions began to organize and strike for better working conditions, the courts interpreted these actions as an obstruction to the free flow of commerce and the general welfare. When state legislatures and eventually Congress began to enact laws to protect labor, the Supreme Court frequently struck them down as unconstitutional. They were considered a violation of Fourteenth Amendment guarantees because they deprived corporations of property rights without due process of law.

Labor's struggle for legal recognition was long, violent, and divisive. Bloody battles erupted at coal mines, in steel mills, in auto plants, and on the docks. Labor had to win its struggle with state legislatures, the Supreme Court, and the public. This was not fully achieved until at least the 1930s.

Chronology

1840s	President Van Buren established the 10-hour working day for government workers. Until then, an 11-hour day was common and would remain the average for nongovernment workers into the 1860s. Operators in cotton mills would continue to work 13- to 14-hour days.
1842	The Supreme Court of Massachusetts, in the case of Commonwealth v. Hunt, decided that labor unions had a right to exist in Massachusetts.
1868	The National Labor Union helped push through Congress a law establishing an eight-hour working day for laborers and mechanics employed by or in behalf of the federal government.
1879	Massachusetts passed a law prohibiting women and children from working more than 60 hours per week.

1890	The Sherman Antitrust Act was passed by Congress to protect the public from monopoly and conspiracy practices of large corporations and to restore free competition. This new law was not very successfully enforced against corporations. However, it *was* used against labor unions to break strikes by considering strikes to be conspiracies to interfere with trade and commerce between states.
1896	Utah passed a law limiting the working day for miners to eight hours.
1898	Congress passed the Erdman Act, which provided for the arbitration of labor disputes involving carriers going between states. This was a victory for the railroad workers, who now had the right to bargain with management.
1905	The U.S. Supreme Court declared unconstitutional a New York law that fixed a maximum working day of 10 hours for New York bakers. Such laws were held to deprive owners of the property rights guaranteed by the Fourteenth Amendment. A law limiting a person's control over his or her business, including employment policies, deprived that person of his/her property without due process of law. The Court also said that this law violated a person's right to enter into any contract desired. Accepting employment is a contract, even when not written down.
1908	In the Danbury Hatters case, the U.S. Supreme Court ruled that members of a labor union were to be held financially responsible for the full amount of individual property losses to businesses brought about by strikes. This ruling forced financial ruin on unions if there was any loss of business or property damage during strikes.
1910	New York passed the first important state law to compensate workers for accidents that took place on the job.
1912	Massachusetts passed the first minimum wage law. Employers could not pay a wage earner less than a certain minimum wage.
1914	Under Wilson's administration, Congress passed the Clayton Antitrust Act, which declared that labor unions and farm organizations had a legal right to exist. Union activities could not be considered "conspiracies in restraint of trade," as they had been under the Sherman Antitrust Act. The act made strikes, peaceful picketing, and boycotts legal under federal jurisdiction. It also said that courts could not grant an injunction in a labor dispute *unless* it was necessary to "prevent irreparable injury to property."
1916	President Wilson urged Congress to establish an eight-hour workday for railway employees with no reduction in wages after they threatened to strike. Congress passed the Adamson Act. For the first time, the U.S. Supreme Court said that Congress had the power to set maximum working hours for private employees because of the "public nature" of the railway.

1917	The U.S. Supreme Court ruled that the New York Compensation Law (1910) was constitutional. A precedent was thereby established for other states to enact worker compensation. Before this, the courts had held that if a worker had willingly assumed the risk of the job, the company was not responsible. This was a welcomed victory. In 1917 there were 11,338 accident-related deaths in manufacturing and 1,363,080 injuries.
1920s	The U.S. Supreme Court, in a series of decisions, broadened the federal courts' powers to issue injunctions against strikes, arguing that they interfered with trade between the states. This was a setback for unions because it decreased the protections of the Clayton Antitrust Act.
1933	In the wake of the Depression during Roosevelt's administration, Congress passed the National Industrial Recovery Act (NIRA). It provided that each industry, with the participation of union and business representatives, must adopt a "code of fair practices." These codes had to be approved by the President. Most of these codes stipulated a 40-hour workweek and minimum wages of $12.00 to $15.00 a week. Workers were guaranteed the right to bargain collectively. Employers were forbidden to pressure a worker to join a particular union or to remain a nonunion worker. They were also forbidden to refuse work to workers simply because they were union members.
1935	In the case of Schecter v. United States, the U.S. Supreme Court declared NIRA unconstitutional. The court said that Congress had given too much legislative power to the President. He had no power to approve or disapprove industry codes, and the codes were not legally binding.
1935	Congress passed the National Labor Relations Act, known as the Wagner Act. The act guaranteed labor the right to organize and to bargain collectively for better wages and working conditions. It also provided that the majority of the workers in any plant or industry could select representatives for bargaining with management. It forbade discrimination against or firing of a worker based on union membership.
1938	Congress passed the Fair Labor Standards Act, which guaranteed a maximum workweek of 44 hours, to drop to 40 hours in two years. It also guaranteed a minimum wage of $0.25 per hour, to rise to $0.40 in seven years. It outlawed child labor in industries producing goods for interstate commerce.
1947	Over President Truman's veto, Congress passed the Labor Management Relations Act, called the Taft-Hartley Act. It reduced the power that organized labor had won under the New Deal. It allowed federal courts to issue injunctions against a strike when it affected an entire industry or a big portion of it or if it threatened the general welfare. It also prevented Communists from holding office in labor unions.

Handout 24-2 1 of 1

THE RAILROAD MEN'S WAR (1877)

1877 was the year of the great railroad strike, in which labor came into a full-scale conflict with industry. The strike began when the Baltimore and Ohio Railroad ordered a ten percent reduction in wages. This was the second wage reduction in eight months, cutting paychecks to five or six dollars a week. In addition, railroad workers were expected to pay their own expenses on overnight layovers away from home.

Trouble began with the railroads brought in strikebreakers. Policemen had to escort them to their jobs for fear that violence would erupt. Support for the strikers spread to many towns. An army of hungry and desperate unemployed workers joined the protest. When mayors appeared to plead for order, they were booed and shouted down by the citizens.

The strike became a national event when John Poisal attempted to keep a train from derailing by jumping on a locomotive run by strikebreakers. Poisal was shot by the strikebreakers and died nine days later. This generated more support for the strikers, and the strike spread from coast to coast. It flared into a small rebellion. In Baltimore, Pittsburgh, Martinsburg, Chicago, Buffalo, and San Francisco, militias were called out to put down the rioting mobs. Pitched battles resulted in federal troops being called in by President Hayes to restore order and keep the trains running.

This was a remarkable national event because it had not been organized. It was a strike where there were no labor unions. The railroad workers were only organized in local groups called "brotherhoods," whose major concern was insurance benefits, not collective bargaining. Although the Knights of Labor was being openly organized the same year, its influence on the strike was minimal because it did not believe in strikes. The railroad men's war went on for a few more days. Labor, however, was weak. The forces of the railroads and the government crushed the rebellion.

THE HAYMARKET RIOT (1886)

The strike for the eight-hour day began on May 1, 1886. The struggle had actually begun earlier. In the 1860s, hundreds of eight-hour leagues were formed across the country. There was a feeling among the working-class that the factories could afford a shorter day at the old pay and now was the time to get it.

In 1884 the American Federation of Labor was in its infancy. The federation organized the eight-hour campaigns and set May 1, 1886 as the date for a general strike nationwide. Laborers bought and wore eight-hour shoes, smoked eight-hour tobacco, and sang eight-hour songs:

We mean to make things over;
  We're tired of toil for naught.
We want to feel the sunshine,
  We want to smell the flowers;
We're sure that God has willed it,
  And we mean to have eight hours.
Eight hours for work, eight hours
  For rest, eight hours for what we will.

May 1, 1886 was a beautiful day in Chicago. Thousands of men and women waited for the parade to begin. The atmosphere changed as militiamen waited nervously to be called to action. At the meeting site, many speakers vented their feelings about the eight-hour day.

Trouble came on the third day of the strike at the McCormick Harvester Works, where strikebreakers had replaced strikers. The strikers rushed to the plant to heckle the "scabs" as the work shift changed. In a few minutes, 200 police arrived. The skirmish turned into a riot. When it was over, four workmen were dead and many were wounded.

Leaflets called for a mass protest the next day, May 4, at Haymarket Square. A crowd of 3,000 people showed up; 180 policemen arrived and demanded that the crowd disperse. Suddenly, without warning, there was an ear-splitting explosion. Someone had thrown a bomb into police ranks. One policeman was killed on the spot; seven died later. A number of citizens were killed.

Haymarket opened the country to hysteria about unionism. Chicago immediately started a reign of terror. Police arrested 25 printers and wrecked their presses; they beat people suspected of conspiracy. Everywhere the police announced they had found pistols, swords, dynamite, and red flags.

Ten men were indicted for planting the bomb and charged with conspiracy to commit murder. The trial was less than fair. The jury had been chosen by the bailiff and included a relative of one of the victims. Much of the testimony was fabricated. The jury found eight guilty. Seven were sentenced to hang, and the other was given a 15-year sentence. Two others had escaped to Europe.

On November 11, 1887, four of the convicted were executed. One man had committed suicide, and two of the sentences were changed to life in prison.

THE DEBS REVOLUTION (1894)

The country came near a revolution during the Pullman strike of 1894. What began as a relatively small strike in a small town spread nationwide and almost paralyzed all industries.

George Mortimer Pullman, president of the powerful Pullman Palace Car Company, refused to discuss grievances with his employees. The American Railway Union, led by its president, Eugene V. Debs, took up the fight for better wages. These two self-educated men, who both came up from poverty, were to take very different paths that met on a collision course in the Pullman strike.

During the summer of 1893, Pullman began a squeeze on his employees to reduce the work force and to reduce pay. This move, Pullman thought, was necessary to meet economic conditions and the recession of 1893. As a result, workers fell behind in their rent payments. Some workers, after deductions, were taking home weekly paychecks of 47 cents.

Eugene Debs bowed to demands by the members of the American Railway Union to call for a strike. The strike was organized. Inspectors were to refuse to inspect the Pullman sleepers, and switchmen were to refuse to switch them onto trains or to sidetrack them. Engineers and brakemen were to refuse to haul trains carrying Pullman Palace cars on them.

The boycott against Pullman Car Company began slowly. Management reacted by firing switchmen. Other workmen then walked off the job. As the strike spread, it began to shut down railroads like the Burlington, the Santa Fe, and the North Central. Soon the strike affected 27 states.

An important turn in the strike came when the federal government became involved. President Cleveland sided with management, claiming that the strike was interfering with the movement of the U.S. mail. An injunction was served against the American Railway Union to prevent strikers from interfering with the movement of the mail. (An injunction is an order to restrain someone from committing an illegal act.) President Cleveland ordered federal troops into Illinois against the governor's objections. While the troops were presumably called to enforce the injunction and preserve order, serious rioting was the result.

On July 4, 1894, in Chicago, people congregated, overturned some cars, and set them aflame. They did the same thing at the stockyards. The next day, another fire broke out at the World's Fair Columbian Exposition. Seven buildings were burned. More federal troops were sent to Chicago. Debs offered to end the strike if management would agree to arbitration.

Meanwhile, the courts ordered a grand jury investigation of Debs. He was charged with criminal conspiracy to obstruct the mails, interference with interstate commerce, and intimidation of citizens. Post office officials raided the office of the American Railway Union and seized Debs's personal papers.

On July 10, Debs decided to try to save the strike by extending it to other industries nationwide. Debs wanted to paralyze the entire economy. This way, the government could be forced into neutrality over all labor-management disputes. Debs issued an appeal for help, but it was poorly received. The general strike was a failure. Slowly, more and more trains began to move. The American Federation of Labor asked all workers to return to work.

The remainder of the strike was played out in the courts. Debs went on trial September 5. He was sentenced to six months in the county jail. The government won its objective--to smash the strike.

THE WOBBLIES (1905-1909)

On June 27, 1905, Big Bill Haywood mounted the platform at Brand's Hall in Chicago and gaveled the meeting to order. Haywood explained that the purpose of the meeting was to begin the Continental Congress of the working class. Forming a working-class movement to emancipate the workers from the bondage of capitalism was to be its goal. Thus was born the most colorful labor organization in American history, the Industrial Workers of the World (called the IWW or Wobblies).

The IWW was made up of workers in 13 different industries, including agriculture, mining, and railroads. The early years of the union were difficult. The first indication of public support came when its leaders were arrested for the murder of the governor of Idaho during a strike. The leaders were taken from Colorado to Idaho without proper court proceedings. Americans were outraged at the violation of due process rights under the Constitution. The men were put on trial, but the jury returned a verdict of not guilty.

The Wobblies had many other successes, due in large part to their ability to organize and maintain membership. Their list of strikes is long, but their most impressive victory came in 1909 against the Pressed Steel Car Plant in McKees Rocks.

Wages at the car plant were low and had already been reduced because of the panic of 1907. What really upset employees was the introduction of the "pool system." Pay was assigned to gangs and was given to the foreman to distribute as he saw fit. The foreman then used wages to reward or punish workers. On July 10, 40 employees refused to work unless they were told their rate of pay. They were fired. Within 48 hours, 5,500 men had walked off the job.

Strikebreakers were quickly assembled and loaded aboard ships on the Ohio River. Workers prevented them from reaching the factory after much rifle fire. Management then surrounded the plant with troops and police and escorted the strikebreakers in. Sixty strikers had themselves hired as strikebreakers and managed to convince the others to leave the factory. Other skirmishes broke out when managers evicted 47 families from their houses to make room for the "scabs." Union leaders threatened that for every striker killed, a trooper's life would be taken.

Strikebreakers defected in large numbers, even though the company tried to keep them inside the plant. By now it was obvious that the factory could no longer operate. The company was defeated. On September 7, 1909, the pool system was ended and wages were raised by five percent. All strikers were rehired.

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THE CHILDREN'S CRUSADE (1912)

The most unusual strike before World War I occurred in Lawrence, Massachusetts, in 1912. It was a local affair that attracted national attention.

Wages in Lawrence in 1912 were at the starvation level. For a 56-hour week, laborers earned an average of $8.76. The breadwinners took home $400 a year. Half of the money went to pay rent for a five-room flat in crowded tenements. Often the children went hungry; there were days when the only food was bread and water.

The immediate cause of the uprising in Lawrence was a reduction in the workweek from 56 to 54 hours. Normally, this would have been hailed as a victory, but laborers in the textile mills were not told whether this would also lower their weekly wages. On the first payday after the new ruling, workers found their checks $0.32 lower. Women in the textile factories began shouting, "Not enough pay! Not enough pay!" The next morning the fury spread to other mills. The workers went on a rampage, shutting off power, cutting belts, and shredding cloth. Ten thousand were on strike. The Industrial Workers of the World (IWW) was called in to help.

The IWW organized the most effective strike up to this time. The most important feature was the use of picket lines. The strike grew to 22,000 people. The picketers were blasted with water hoses, but they refused to react. They had taken a vow of nonviolent resistance. They challenged the police to arrest them but did not fight back. Committees visited "scabs" at home and persuaded them not to take jobs. Great relief funds were collected and distributed to the strikers. The walk-out lasted nine and one-half weeks.

The feature of the strike that attracted national publicity and stirred the sympathy of the public was the use of children of the strikers. In order to save the children from the hardships of the strikes, the organizers hit upon the idea of shipping them out of town to live with other families. A massive effort was organized to relocate the children, who took with them the cause of the strikers. Several families were arrested for this tactic, and a congressional investigation was launched.

The factories of Lawrence could not hold out against the publicity that resulted, and they were finally forced to surrender. Management granted a pay increase of five percent, and the workers returned to their jobs.

THE STEEL STRIKE OF 1919

The early postwar years were not good ones for American labor. As economic depression hit the nation, unemployment grew, the cost of living rose, and labor discontent increased. In 1919 there was a rash of strikes across the country, including a strike in the steel industry involving more than 300,000 workers.

Steelworkers were unhappy about working conditions. In some places, like Gary, Indiana, employees worked 12 hours a day, seven days a week. Through the American Federation of Laborers, the National Committee for Organizing Iron and Steelworkers was formed. The committee launched a drive in steel towns to organize workers and present demands for an eight-hour day to management. When management refused to recognize the committee as a representative of all steelworkers, a massive strike was called for September 22.

Several factors led to the defeat of the strike. The country was being swept by a "Red scare." In the wake of the Russian Revolution of 1917, public opinion was turning against labor. Strikers and labor leaders were labeled as Bolsheviks and communists, and management took advantage of the public fear of revolutionary plots.

The steel strike was weakened for another reason. Many of the workers were immigrants who had come to the United States during the great waves of immigration of the preceding decades. Fear and competition stirred among the different nationalities, each of whom became anxious that they might be replaced by other nationalities if they did not remain on the job.

On October 4 in Gary, strikers returning from a meeting met a group of homeward-bound "scabs," and the two groups engaged in a small fracus. The National Guard was called out, and martial law was declared. Strike leaders were arrested, picketing was restricted, and union meetings suppressed. Union members began to go back to work. By November many plants in the Chicago area were back in operation. All hope of a settlement vanished. On January 8, 1920, the strike was suspended. On July 1 the National Committee for Organizing Iron and Steelworkers was disbanded.

THE LONGSHOREMEN'S STRIKE OF 1934

The major problem facing dockworkers on the West coast was a hiring system called the "shape-up." Workers would form a line at the docks each morning, hoping that a foreman would pick them for the job. Many waited hours before being chosen. No one was assured a job unless one had an "in" with a foreman or was willing to pay a bribe.

In 1933 the political climate was more favorable than ever for union activity. The country was in the midst of the Great Depression, and Franklin D. Roosevelt had just been elected President of the United States. Roosevelt's New Deal policies did not include attacks on labor, since a large number of Americans were unemployed. When the National Industrial Recovery Act was passed in 1933, it included an important labor clause, Section 7(a). This clause granted workers the right to organize and bargain collectively. Many unions used this clause to begin new membership drives across the country. The International Longshoremen's Association on the San Francisco docks was one.

The first move of the ILA was to call a convention in 1934. The convention proposed that companies grant full recognition of the union, that the union control hiring, and that companies raise wages from $0.85 an hour to $1.00. They also proposed a 34-hour workweek. Employers refused to deal with the union, and a strike date was set for March 23, 1934.

The union developed its strike tactics well. One was 24-hour pickets to guard against strikebreakers; the second tactic was unity of all maritime workers, including seamen; and the third was a joint committee of all maritime unions pledged not to return to work until agreements were met satisfactorily.

On July 3 employers responded to the strike by moving stalled goods out of Pier 38 and on to market. To protect the trucks carrying the goods, they placed railroad cars on both sides of the roads leading from Pier 38 to provide a barricade from the striking workers. When the trucks emerged from the pier, the docks of San Francisco became a vast tangle of fighting men. For four hours skulls were battered as the entire police force of the city was called out.

San Francisco was buzzing. A general city-wide strike was called in support of the dockworkers. On July 16 San Francisco was at a standstill. One store after another was forced to close its doors. The general strike lasted four days. The strikers had generated so much public support that now they would not face total defeat. Employers and union agreed to arbitration on July 23. The settlement provided for union recognition, a 34-hour week, $0.95 an hour, and a voice in hiring practices.

THE GENERAL MOTORS SITDOWN STRIKE (1936)

In 1936 a Model-T Ford sold for $950.00. The men who built them, however, believed that they received few benefits from this successful industry. Only the young were capable of standing the pace of the assembly lines. Many men at age 30 looked as if they were 50. During the hot summer, many workers died and hundreds more were hospitalized. An employee worked furiously in the busy season and was laid off in the slow season. If he was too old or too tired, he was not called back.

In November 1936, a major grievance arose at the General Motors plant when the management cut three-man crews to two. The Perkins brothers sat through their shift refusing to work. They were called into the office and fired. "The Perkins boys were fired! Nobody starts working," someone shouted. A sitdown strike by 700 employees began. They refused to work until the men were rehired. Rehired they were, but they didn't work for long. The newly organized Congress of Industrial Organizations (CIO) was making plans for a strike designed to protest General Motors plant policies of spying on union activities.

The usual policy of General Motors when labor troubles flared was to take its equipment elsewhere and begin operations anew. However, union leaders proposed that workers seize the plant in a sitdown strike. The sitdown protected the strikers from police, troops, and tear gas. The corporations would think twice before subjecting their expensive machinery to warfare.

The sitdown strikers at General Motors recognized the importance of keeping the plant neat and free of damage, so clean-up crews were quickly organized. Patrols were set up to insure that no one was drinking. Quickly, the strike spread to other General Motors cities, and the company was at a near standstill.

To remove the strikers, the company devised a simple plan. First, it would deny the strikers in the plant heat and food. Then it would find some reason to take over the factory. On January 11, 1937 the temperature was 16 degrees and union supporters were denied entry to the plant with the strikers' evening meal. This created a minor skirmish, and the charged-up police began releasing tear gas into the plant.

"We want peace. General Motors chose war. Give it to them," someone shouted. Armed with firehoses and automobile door hinges from inside the plant, the strikers struck back. They formed a barricade of automobiles between them and the police, and from the roof of the factory they threw hinges, nuts, bolts, and bottles. The police never made it to the plant.

General Motors agreed to negotiate directly with CIO leader John L. Lewis. They agreed to recognize the union, take no action against strikers, and grant a $0.05 an hour wage increase.

25. THE STRUGGLE AGAINST CHILD LABOR

Introduction:

Students are probably unaware of the long legislative and judicial history of protective legislation against child labor. This learning stations activity gives students an appreciation for the political and legal struggle that took place during a 150-year period. Working in pairs, students construct a chronology of this history from the information they are given at each learning station. This activity can be used when studying 19th-century industrialization or labor legislation in the 20th century.

Objectives:

1. To develop awareness of legislation and Supreme Court decisions relating to child labor.

2. To prompt student recognition that legal protections against child labor were the result of a long history of political struggle and social legislation.

3. To enhance skills in reading, writing, and chronology.

Level: Advanced grade 8 and above

Time: One to two class periods

Materials: Copies of Handout 25-1 for all students; one copy of Handout 25-2, cut apart and posted randomly around the classroom

Procedure:

1. Before the activity, have students read about child labor in their textbooks. Some texts have particularly effective descriptions of the conditions under which children worked in the 19th and early 20th centuries. You can also have students brainstorm a list of the advantages and disadvantages of child labor during the period of industrialization.

2. Distribute Handout 25-1. Explain to students that protective legislation against child labor took more than 150 years to achieve. Read the instructions on the handout with the class. You might give students an example of a summary of one of the learning stations to assist them in their task.

3. Have students select partners and proceed to each of the learning stations. Allow time for students to complete their chronologies.

4. Reassemble the class and go through each of the items in the students' chronologies.

5. Debrief the activity using the following questions:

--What level of government first passed child labor laws?

--Why didn't Congress succeed in passing child labor laws in the early 20th century?

--When did the Supreme Court finally decide that Congress could make laws regarding child labor?

Handout 25-1

A HISTORY OF THE STRUGGLE AGAINST CHILD LABOR

Instructions

With your partner, go to each learning station and read the information. Try to summarize the important information at each station in one sentence. Write the sentence down, along with the title and date of the event, on a piece of paper. When you have visited all the stations, arrange your notes in chronological order on this page. When you have finished, you will have a history of the struggle against child labor.

DATE EVENT

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LEARNING STATIONS

CHATTELS OF THE FAMILY AND WARDS OF THE STATE--COLONIAL AMERICA - American colonists carried English attitudes about children into the New World. The colonies were not interested in protecting children from overwork or conditions dangerous to their health. Laws required that a useful trade or skill be taught children to prevent "sloth and idleness wherein such young children are easily corrupted."

PAUPER CHILDREN - In Virginia in 1619, workmen were badly needed. Hundreds of English pauper children were kidnapped and brought to the colonies to work. Work was a desirable alternative to allowing these children to be a burden to society. They were also a source of cheap labor.

SAMUEL SLATER'S FACTORY IN RHODE ISLAND - Samuel Slater was called "the father of American manufacturing." He staffed the first factory in Pawtucket, Rhode Island in 1790 entirely with youngsters from 7 to 12 years of age. They worked 72 to 84 hours a week. Children could be paid much less than adults.

WORKDAY FOR CHILDREN - From 1825-1832, reports on child labor in states such as Pennsylvania and Massachusetts found children 6 to 17 years of age working 12 or 13 hours, six days a week. They made up two-fifths of the total number of workers in the states under study. Concerned about children's health, some states passed laws between 1842 and 1867 limiting the workday for children under 12 years of age to 10 hours. Children under 16 were limited to 60 hours a week. Pressure for these laws came from labor unions, which pointed out that child labor was keeping down wages for all laborers.

COMPULSORY SCHOOL ATTENDANCE, STATES' CONCERNS - Reformers concerned about child welfare realized that child labor was producing generations of adults who were illiterate and could not read the Bible. This concern resulted in a series of state laws relating to education. Connecticut passed a law requiring that reading, writing, and arithmetic be taught to all children while working in the factories. In 1836, Massachusetts passed a law saying that children under 15 could not be employed unless they had attended school for at least 3 months the preceding year.

COMPULSORY SCHOOL ATTENDANCE, THE KEY TO LIMITING CHILD LABOR - Many states concerned about child labor followed the example of Massachusetts, which passed a series of laws affecting children from 1873 to 1889. In 1873 the length of the school year was extended to 20 weeks for children 12 and under. In 1883 towns with more than 10,000 population were required to establish evening schools for children's education. In 1884 children under 13 were excluded from work in factories, etc. Outdoor work, such as farm work, was forbidden unless the child had attended 20 weeks of school. In 1889 compulsory school attendance for 30 weeks was extended to children up to 14 years of age.

FIRST MINIMUM WAGE LAW - In 1912 Massachusetts passed the first minimum wage law for children and women. Fourteen states did the same. Children and women had historically received much lower pay than men for the same work. Textile industries routinely hired children and women for very low wages and workweeks up to 84 hours. For example, in 1860 the average wage for men in Massachusetts was $5.00 per week, for women $1.75 to $2.00, and for children, $1.00 to $2.00.

CONGRESS BEGINS TO PASS CHILD LABOR LAWS - World War I revealed that of men drafted between the ages of 21 and 31, 20 percent could not read or write. This was the highest illiteracy rate in all industrialized countries. As a result, Congress began to become interested in child labor laws and compulsory education on a national basis.

CHILD LABOR ACT OF 1916 - This law, passed by Congress, tried to end child labor by banning the interstate sale of goods produced by children under 14 years of age working more than 10 hours a day. This was the first real attempt by the national government to control child labor.

HAMMER V. DAGENHART (1918) - SUPREME COURT DECISION - This decision said that the Child Labor Act of 1916 was unconstitutional. The reason the court gave was that Congress was trying to regulate manufacturing rather than interstate commerce. This power was not granted to Congress by the Constitution. The court was more concerned with the powers to regulate commerce than with the welfare of children.

CHILD LABOR TAX ACT (1919) - When the Child Labor Act was struck down by the Supreme Court, Congress tried again to pass a federal law to discourage the use of child labor. The Child Labor Tax Act placed a high tax on products made by industries that employed children. A 10 percent tax on the net profits of any company using child labor was intended to discourage them from hiring children.

BAILEY V. DREXEL FURNITURE CO. (1919) - SUPREME COURT DECISION - The Supreme Court struck down the second attempt by Congress to end child labor. The court said the Child Labor Tax Act was unconstitutional because Congress was using its power to tax in order to discourage child labor. The court said that it was up to the states to regulate these matters. Congress did not have the right to tell the states what to do concerning child labor.

AMENDMENT TO THE CONSTITUTION INTRODUCED (1924) - Congress was not willing to give in to the Supreme Court in the fight against child labor. As a result, Congress submitted to the states a constitutional amendment that would give Congress the power to "limit, regulate, and prohibit labor of persons under 18 years of age." By 1938 only 28 of the 48 states had ratified the amendment. It never was ratified, but other laws made it unnecessary.

FAIR LABOR STANDARD ACT OF 1938 (WAGES AND HOURS ACT) - The minimum workweek was set at 44 hours per week during the first year of employment; by the third year, it had to be reduced to 40 hours per week. Minimum wages were increased to $0.40 per hour. One important part of the act prohibited the shipment between states of goods produced in establishments where "oppressive" child labor was employed. Under the act, the Children's Bureau was made responsible for setting regulations for child employment to prevent interference with schooling, health, and well-being.

UNITED STATES V. DARBY LUMBER COMPANY (1941) - The provisions of the Fair Labor Standards Act were tested in this Supreme Court case and upheld. This decision overturned the Dagenhart decision of 1918. It also made the child labor amendment unnecessary. Child labor had legally become an area in which Congress could make laws.

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26. THE TREATY OF PARIS (1898):
SENATE FOREIGN RELATIONS COMMITTEE HEARING SIMULATION

Introduction:

The Treaty of Paris confronted the U.S. Senate with the consequences of intervention in international affairs. A decision had to be reached on the annexation of the Philippines. During peace negotiations, the executive branch had made a commitment to annexation. However, Article II, Section 2 of the Constitution requires concurrence of the Senate for treaty ratification. This provision makes it possible to openly debate treaty terms of a controversial nature. It also places pressure on the executive branch to negotiate for terms that will survive a public debate in the United States.

This activity is a simulation of a hearing before the Senate Foreign Relations Committee called to hear testimony for and against ratification. The format was chosen to permit introduction of additional points of view expressed publicly at the time of the Senate debate. Witnesses who testify must try to convince the Senate committee of their points of view. The committee must then vote on whether to recommend ratification of the Treaty of Paris. This activity can be used at the beginning of a unit on U.S. foreign policy in the early 20th century.

Objectives:

1. To develop understanding of the context in which the United States acquired the Philippines.

2. To develop understanding of the issues and controversies surrounding the question of annexing the Philippines.

3. To reinforce understanding of the relationship between the executive and legislative branches.

4. To develop understanding of the process of treaty ratification.

5. To allow students to experience the process of legislative decision-making.

6. To develop new vocabulary relating to foreign policy.

Level: Grade 11 and above

Time: Three class periods and out-of-class preparation

Activity developed by Kay Young, U.S. history teacher at Los Alamos High School, Los Alamos, New Mexico.

Materials: Copies of Handouts 26-1 and 26-2 for all students; sufficient copies of other handouts for students assigned to related roles; name tags for role players

Procedure:

1. Distribute Handout 26-1. Read through the background information and explain to students that they will enact a Senate committee hearing to consider ratification of the Treaty of Paris.

2. Read through the role descriptions on Handout 26-2. Explain what is required of the witnesses and Senate committee members. Either select students to play roles or ask for volunteers. Explain that the rest of the class will act as senators who are observing the hearing, with the responsibility of taking notes and voting to accept or reject the recommendation of the Foreign Relations Committee.

3. Distribute Handout 26-3 to Senate committee members, Handout 26-4 to witnesses and observers, and Handout 26-5 to observers.

4. During preparation time, have committee members prepare questions for witnesses while witnesses prepare their roles. Observers should review the materials they have been given. Work with individuals and have students complete preparations as homework.

5. Prior to class on the second day, set up the room for the hearing. Several desks or a large table should be placed in the front of the room for the Senate committee. A single desk should be placed between the committee and observers for the witnesses.

6. Instruct the committee chairperson to call the hearing to order and allow five to seven minutes per witness (including questions).

7. Complete the hearing on the third day. Then allow the Senate committee ten minutes to deliberate on their recommendation. During this time, ask all observers to write out their decision and their reasoning.

8. Have the chairperson announce the committee's decision and discuss reasons for the decision.

9. Ask all students senators (observers and committee members) to cast their vote on the Treaty of Paris. A two-thirds majority is needed for ratification.

10. Debrief the activity, discussing the following questions:

--Is this a good way for a country to make decisions regarding treaties? What are the advantages and disadvantages?

--If you had been a senator in 1899, would you have felt you had enough information to make a choice based on the testimony?

--Which of the witnesses relied mainly on facts and which relied more on emotions? Which type of witness influenced you the most?

--What is the best basis for this kind of decision? Might makes right? What's fair to all concerned (U.S., Philippines, Spain)? The best interests of the United States only?

--Is there any way the Philippine point of view could have been included at any point in the treaty-making process?

11. Read the following information to the class to inform students of the outcome of the ratification vote and subsequent events in the Philippines:

The debate was divided largely along party lines, with Republicans favoring ratification and Democrats opposing it. William Jennings Bryan, leader of the Democratic party, began as an anti-imperialist but finally urged Democrats in the Senate to vote for annexation in the interests of concluding peace with Spain. The Treaty of Paris was ratified by the Senate on February 6th, with a margin of only two votes.

On February 4th, Filipino rebels broke out in armed revolt against the United States. The rebellion lasted for two years and involved 70,000 American troops. In 1899 and 1900, American commissioners were sent to the islands to study conditions and make recommendations. Self-government was granted in 1916. In 1934 the McDuffie Act authorized establishment of a Philippine Commonwealth and promised independence in ten years. World War II postponed Phillipine independence until July 4, 1946.

TREATY OF PARIS - 1898
SENATE FOREIGN RELATIONS COMMITTEE HEARING

Background

During the 19th century, many industrial nations were competing for fresh markets in Asia. Spain, England, Germany, and the United States were among the most active countries trying to establish oriental "spheres of influence" (protected foreign markets) for trade. In an era of steamships, Pacific islands became vital refueling ports for China-bound vessels. The United States acquired Midway Island in 1867 and had longstanding ties with Hawaii through American sugar plantation owners. Spain ruled the tiny island of Guam and the Philippine Islands.

Closer to home, the United States was concerned with Spanish misrule in Cuba, her colony. Conditions there led to two Cuban rebellions in the 19th century. In the beginning, the United States was neutral in the conflict, but public opinion shifted in favor of the Cubans. The United States sent the battleship Maine to Havana harbor to protect American lives and property. Just when Pro-Cuban sympathies were at their peak, the Maine was blown up. Efforts to negotiate a peace with Spain failed, and the United States declared war on Spain. Six days after the start of the war, Commodore George Dewey sailed into Manila Bay in the Philippines, the center of Spain's power in the Pacific, and destroyed the Spanish fleet. The Philippines were then occupied by American troops. Within three months the United States had also defeated the Spanish in Cuba.

Spain paid a steep price for losing. Although the United States had not entered the war with the intention of gaining new territories from Spain, Dewey's success at Manila stirred a new desire to establish a powerful U.S. presence in the Pacific. Those who favored this kind of expansion persuaded President McKinley to demand the Philippines as a condition of peace with Spain. After strong resistance, Spain agreed to the demand as part of the Treaty of Paris.

Once the treaty was signed, the U.S. Constitution required that the Senate ratify it. However, the treaty presented the Senate with a new and disturbing problem. Should the United States become the colonial ruler of remote islands populated by an alien people? The Philippines, after all, were 6,000 miles away, close to the coast of China. The Philippine population consisted mainly of Malays, who practiced the Mohammedan religion, and a small population of Spanish colonials. Neither population spoke English or practiced a democratic form of government.

The United States had shown no hesitation about expanding within the North American continent. Popular sentiment viewed this type of expansion as the "Manifest Destiny" of the American people. Settlers had flocked to these regions, quickly demanding and receiving annexation of territory to the United States.

Expansion beyond the North American continent was a little harder to justify. Even the purchase of Alaska had been ridiculed as "Seward's Folly." Furthermore, Filipinos didn't want American rule. They had hoped that American victory against the Spanish would rid them of foreign rule. Filipino rebels established a provisional government and declared independence in June. The terms of the Treaty of Paris came as a bitter blow to the rebels.

The Treaty of Paris was signed in December 1898, but could not go into effect until ratified by the Senate. In the Senate, the debate went on for two months. Early efforts to keep the debate secret were defeated by anti-imperialists, who wanted full public discussion of the issues involved.

THE TREATY OF PARIS

1. Spain was to give up title to Cuba and pay Cuban debts amounting to about $400,000,000.
2. As security against this debt, Spain was to give Puerto Rico and Guam to the United States.
3. Spain was to give the Philippines to the United States in return for a payment of $20,000,000.

Chronology of the Spanish-American War

February 9	The DeLome Letter Incident. DeLome was the Spanish Minister to the United States. Cuban rebels stole a private letter he had written. It contained critical remarks about President McKinley. The contents of this letter were published in the New York Journal.
February 15	The U.S. battleship Maine exploded and sank in Havana harbor with 260 American fatalities. The exact cause of the explosion was never determined.
February 25	Assistant Secretary of the Navy, Theodore Roosevelt, sent secret orders to Commodore George Dewey, who was in charge of the U.S. Asia squadron based in Hong Kong. The orders directed Dewey to sail immediately to Manila Bay in the Spanish-owned Philippines if war broke out with Spain.
March 27 & 28	The U.S. cabled Spain with several demands relating to Cuba.
March 28 - April 9	Spain agreed to most of the above demands.
April 11	President McKinley sent a war message to Congress.

April 19	The U.S. recognized Cuban independence and stated that "the United States hereby disclaims any...intention to exercise sovereignty (rule), jurisdiction, or control over said Island (Cuba) except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the Island to its people."
April 25	United States declared war on Spain.
May 1	Battle of Manila Bay. The U.S. Asiatic Squadron under Dewey destroyed Spain's Pacific fleet in a seven-hour battle.
June	Filipino rebels proclaimed independence.
July 3	United States destroyed the Spanish fleet in Cuba following a four-hour naval battle.
July 4	United States acquired Wake Island (in the Pacific).
July 7	United States annexed Hawaii.
July 17	Spanish troops in Cuba surrendered.
July 26	Spanish government sued for peace.
August 12	Hostilities between the United States and Spain ended. The war had cost the United States 5,462 lives and about $250,000,000.
October 1	Peace Commission met in Paris.
November 1	United States demanded cession of Philippines.
December 10	Treaty of Paris signed.

Handout 26-2 1 of 1

ROLES FOR SENATE COMMITTEE HEARING

Chairperson of the Senate Foreign Relations Committee and six Committee Members - The committee will hear testimony and vote on whether to recommend ratification of the treaty by the full Senate.

Admiral Alfred T. Mahan - Author of a major work on the influence of sea power on history. He feels that if America is to rank among world powers, it must build up a strong fleet and establish naval bases at strategic points around the world. The Admiral fully supports annexation of the Philippines.

Reverend Josiah Strong - A Protestant evangelist minister who has a strong belief in the "White Man's Burden" to bring Christianity and liberty to the non-Anglo-Saxon people of the world. Reverend Strong will argue that America has an obligation to annex the Philippines for this reason.

Albert J. Beveridge - A young lawyer from Indiana with ambitions of becoming a Senator. Beveridge feels that a growing American industry requires new markets and that economic self-interest is an argument for acquiring the Philippines. Like Reverend Strong, he feels that America has a mission to introduce democracy to the rest of the world.

Henry Cabot Lodge - Boston Brahmin and Senator from Massachusetts. Lodge is convinced that American rule will benefit the Philippines more than independence. He argues that the American Constitution permits the United States to acquire and rule foreign territories.

William G. Sumner - A scholar who teaches at Yale. He does not accept the idea that Western civilization is superior. He feels that Asians will resist the imposition of American values and political traditions. He believes that the greatest gift we can give other countries is liberty.

Carl Schurz - A German-born journalist and member of the Anti-Imperialist League. He opposes American economic exploitation of the undeveloped nations. He questions the value of annexing the Philippines, saying that the cost of annexation is far greater than any benefits the United States will gain.

Samuel L. Clemens (Mark Twain) - Author disillusioned by American efforts to copy European imperialism. He feels it is the rightful role of America to serve as the champion of independence.

George F. Hoar - The senior Senator from Massachusetts. Although a founder of the Republican party, he rejects his party's expansionist philosophy. He believes that the Constitution does not permit American rule over colonies and that colonialism is contrary to the American democratic tradition as stated in the Declaration of Independence.

Observers - Members of the Senate who are attending the hearing to become more fully informed on the issues before voting on ratification of the Treaty of Paris.

INSTRUCTIONS TO THE SENATE FOREIGN RELATIONS COMMITTEE

The year is 1899. You are a member of the Senate Foreign Relations Committee, which will hear testimony and then recommend to the entire Senate whether or not to ratify (approve) the Treaty of Paris of 1898. The Senate is under a great deal of pressure to bring an end to the war with Spain. There is general agreement on most of the terms of the treaty (independence for Cuba, American annexation of Guam and Puerto Rico, payment of debts), but anti-imperialists have raised a number of arguments against annexing the Philippines. You must decide if the Treaty of Paris is in the best interests of the United States. You will listen to the testimony of each witness, take notes, and then ask questions.

Chairperson

The chairperson calls the meeting to order and asks the witnesses to present testimony. Allow between five and seven minutes for testimony and questions. After each witness concludes his/her formal testimony, ask your fellow committee members if they have any questions to ask the witness. You as chairperson may also ask questions. When the committee has heard all the witnesses, adjourn the hearing and find a quiet place where you and the committee can discuss the merits of the treaty. When you reach a decision, announce the decision to recommend that the full Senate accept or reject the treaty.

Committee Members

Take notes as each witness testifies. Keep lists of reasons for and against the treaty as you hear testimony. Prepare questions to ask each witness pertaining to his or her testimony and knowledge of the situation. Don't hesitate to ask probing questions. Your job is to try to get as much information as possible about the underlying reasons for the different positions.

After you have heard from all witnesses, your committee will discuss and then vote on whether to recommend Senate ratification of the treaty. The Senate tends to follow a committee's recommendation. Therefore, your decision will strongly influence, if not determine, the treaty's acceptance or rejection. So give serious thought to the consequences of your committee's decision.

Sample Questions

1. How do you justify forcing Christianity on people at gunpoint?

2. Since the Filipinos declared independence last June and set up a provisional government, how can you claim they aren't ready for self-government?

3. Can our need for trade justify taking any country we need? Would you support conquest of China? of Japan?

4. Has anyone asked the Filipinos how they feel about American rule?

5. Does the Constitution allow the United States to rule colonies?

6. Doesn't America have a responsibility to keep the Philippines from being taken by another country, such as Germany?

7. This is a world where only the strongest survive. Why shouldn't we be just as aggressive as other nations in seeking markets? Don't we owe this to our industries and our workers?

8. You say the Constitution doesn't permit us to annex foreign lands. Are you saying we should give Texas, New Mexico, and California back to Mexico?

9. Admiral Mahan has made a strong argument for the importance of sea power. Aren't you concerned about our national security if we don't maintain a strong presence in the Pacific?

10. Why do you assume that American rule in the Philippines would be tyrannical?

INSTRUCTIONS TO WITNESSES

It is January 1899. The Senate Foreign Relations Committee is holding a public hearing on the ratification of the Treaty of Paris, an international agreement that will formally bring an end to the Spanish-American War. Since only members of the Senate may participate in floor debate, the purpose of such hearings is to allow interested members of the public to express their views.

The Treaty of Paris contains several provisions about which there was general public agreement: Cuban independence, settlement of debts, and U.S. annexation of Guam and Puerto Rico. The provision for annexation of the Philippines has provoked a sharp division of opinion, however. Witnesses take the roles of actual historical figures who participated in the annexation debate.

Prepare your testimony from the information given below. Be prepared to talk for from three to five minutes. Try to be as persuasive and sincere as possible. Avoid reading the testimony. Maintain eye contact with committee members. Feel free to use phrases or statements from the material provided or change them for maximum effectiveness. Be ready to answer committee questions on the spot.

Admiral Alfred T. Mahan

You are a career naval officer who has spent much of his life studying the effect of sea power on the course of history. You were appointed Lecturer in Naval History at Newport War College and have published a number of books on naval history including your recent, widely acclaimed book, The Influence of Sea Power on History. Largely because of your urging, America began building great battleships like the Maine, the Massachusetts, and the Oregon, which saw service in the war with Spain. During the conflict, you were recalled to active duty to help direct the highly successful naval operations in the Pacific and the Caribbean.

You believe that America has the potential to become a major world power in the 20th century if only Americans will begin to think big and to look outward beyond the national borders. History has proven that even a small island nation like England can rule the world by ruling the seas. If England can do it, why not America? America should be first and foremost in developing trade with the vast untapped markets of China. A look at any world map will show that the United States is in the best location to take advantage of these markets. We could develop fast, efficient sea lanes to Asia, while our European competitors would have to travel to the far ends of the globe to reach these rich markets. Just look at a map of the Pacific; the Sandwich Islands (Hawaii), Wake, Guam, and the Philippines form a natural American highway to the Orient. If we continue to build up our navy and do not shirk our responsibility to annex these islands, the Asian markets will be ours for the asking. If and when we succeed in building a canal in Central America, there will be no power on earth that can compare with the United States.

History also shows that "he who hesitates is lost." We must take the initiative now. Every European power worth its salt is getting into world trade in a big way. If we don't act, they will. For example, German ships approached the Philippines even as Commodore Dewey and his brave men blockaded Manila Bay. Our withdrawal from this area will not result in Philippine independence; it will result in a German Philippines.

The future of the American economy lies in developing world markets. The future of American security also lies in looking outward. How safe will our great country be if we are surrounded by two European oceans? Senators must think of their obligation to a strong America in the 20th century and cast their votes in favor of annexing the Philippines.

Reverend Josiah Strong

You are a Protestant evangelist minister who has urged stronger church involvement to bring about social justice in America. You have developed very strong opinions about the American character and the obligations that America has toward other people of the world. You have written a book on this subject called Our Country, which influenced many people's thinking.

You believe that the two greatest needs of mankind are spiritual Christianity and civil liberty. The Anglo-Saxon race represents the highest development of these two ideals. Therefore, the Anglo-Saxon race has a special obligation to foster Christianity and liberty among the backward peoples of the world.

The Anglo-Saxons are a chosen people. Although they represent only one-fifteenth of the world's population, they rule one-third of the earth's surface and one-fourth of its people. By the year 2000, Anglo-Saxons will probably outnumber all the other civilized people of the world. They provide the pattern that future generations will copy. History has shown that Anglo-Saxons have a genius for ruling others. They have the energy, perseverance, and independence to excel at leadership. Among the Anglo-Saxon nations, Americans are superior to Europeans. Europeans are fossilized and fixed in their ways. It takes an earthquake to change anything in Europe.

We are now entering a new stage of world history--the final competition among the races. The result will be the survival of the fittest. America must not hesitate to accept the leadership role for which it is destined. We must take up the burden and carry Christianity and liberty to the rest of the world.

The distinguished senators of the committee may have read a stirring poem by the English poet Rudyard Kipling, recently published in McClures magazine. You would like to conclude by quoting a passage from this poem:

Take up the White Man's burden--
Ye dare not stoop to less--
Nor call too loud on Freedom
To cloak your weariness;
By all ye cry or whisper,
By all ye leave or do,
The silent, sullen peoples
Shall weigh your Gods and you.

Albert J. Beveridge, Attorney at Law

You are a 35-year-old lawyer from Indiana who hopes to win a Senate seat in the next election. Born to a poor family, you've had to come up the hard way. You put yourself through college on the prize money you won in speech contests. You have carefully considered all the arguments against expansion and feel you have an answer to each of them.

Distance and oceans are not arguments against annexing the Philippines. The fact that past territories acquired by the United States were contiguous (bordering) lands is no argument either. In 1819 Florida was further away from New York than Puerto Rico is from Chicago today. California was more inaccessible (difficult to reach) in 1847 than the Philippines are now. Steam joins us to the Philippines. Electricity joins us. Our navy will join us. American speed, American guns, American heart and brain and nerve will bind the Philippines to us forever.

Opponents of expansion are right about one thing. There _is_ a difference between annexing California and annexing the Philippines. We didn't need California when we acquired it. It was a savage-filled wilderness that we could hardly hope to populate at the time. Today we produce more than we consume. Our cities are overcrowded and our workers are unemployed. We need the Philippines now!

God has given us a noble land, a mega-England with a greater future. God's chosen people cannot fail to accept their predestined (divinely predetermined) role of leadership.

Opponents of expansion say that we should not rule people without their consent, that America stands for rule by consent of the governed. You reply that only those who are capable of self-government deserve to have it. We don't ask our children how they should be raised. Giving self-government to the Filipinos would be like giving a razor to a baby and telling him to shave himself.

Americans are God's chosen people. How else can we explain our victories at Bunker Hill and Yorktown and Manila Bay? We have conquered a continent and freed our nation from the curse of slavery. We can neither escape nor retreat from the responsibilities placed upon us by divine will. The distinguished Senators have no other option but to vote for annexation of the Philippines.

Henry Cabot Lodge, Republican Senator from Massachusetts

You are a member of one of the oldest and most respected families in Boston. You mingle in the highest circles of power. You have lunch with Admiral Mahan and dinner with President McKinley. Teddy Roosevelt wrote to you regularly when he served in Cuba as colonel of the "Rough Riders." Opponents of expansion have said that America must never destroy the ideal of freedom for which this country stands. You would like to respond to that statement.

During the Spanish-American War, we conquered the Philippines; actually, we destroyed Spain as a colonial power. Now we are faced with a treaty that would approve American rule over these islands. Any kind of American rule over these islands has got to be better than the tyranny exercised by Spain. Yet there are critics among us who do not trust Americans to exercise just and humanitarian rule over the Philippines. This attitude is a slap in the face to everything America stands for.

Under American rule, Filipinos would gain honest government and just courts. Both civil liberties and capital investments would be protected. We would see more rapid development of economic prosperity and honest government than would happen if Philippine independence were allowed.

Opponents of expansion say that we are denying the Philippines liberty, when they've never had it. Opponents say that we are denying self-government, when they wouldn't know what to do with it. Filipinos have never had the least understanding of self-government.

Opponents of expansion say that the United States has no constitutional right to take or govern colonies. They say that our Constitution and traditions prevent us from establishing colonies and from imposing our ways on other people. This simply isn't true. As the Honorable Senator Platt of Connectucut has pointed out, all legitimate governments have the right to rule. This includes the right to rule in any way that is suitable for the particular people involved. We have no obligation to give American citizenship or statehood to Filipinos. Our only obligation is to provide suitable rule that will help to bring these uncivilized natives to some understanding of democratic government.

The distinguished colleagues of the committee have heard testimony from many learned and famous witnesses. They know that our President desires that this treaty by approved. The leadership of the Democratic party agrees that the treaty should be ratified. You urge the committee to recommend prompt Senate approval of all the terms of the Treaty of Paris.

Professor William G. Sumner, Yale University

You are a professor of political and social science at Yale. After graduating from college, you studied in Germany and England. You are a well-known and respected scholar in your field and have written several books on economics and sociology. In addition to being a college professor, you are also an ordained priest of the Episcopal Church. Your knowledge and experience lead you to disagree with the expansionists' claim that America has an obligation to civilize and Christianize alien people.

From your lifelong study of world cultures, you have learned that there isn't an advanced nation on earth that doesn't talk about civilizing the natives of Asia and Africa. The English, Germans, and French all feel that their nations are the most civilized on the earth. The Spaniards also claim to have a superior Christian civilization. They say it is their mission to convert the world and point to the years of successful missionary work they have devoted to Cuba and the Philippines. Each of these nations makes fun of all the others for the pretentious attitudes. Each thinks that its own way is the best.

Why do we take it for granted that the Filipinos will like American ways better than any other? How ridiculous! They despise our language, our religion, and our manners. Those Filipinos who practice the Mohammedan religion believe that their faith is superior and that Christians are infidels and heathen dogs. If we try to impose our ways on them, there will be no end of unrest and uprisings. You can't just go into another country and say "We know what's best for you, so do it--or else." If we try to do that, we are only asking for trouble.

The most important thing that America stands for is liberty. That is the one thing the Philippines has asked us to give them. If we truly believe in liberty, we won't waste time trying to imitate Spain or any other country that tries to force its ways and beliefs on others.

Carl Schurz, Journalist

You are a German-born journalist who opposes American efforts to acquire and rule foreign lands. You are also a prominent member of the Republican party, which supports this type of expansion. Therefore you have led a reform movement within the party to change its stand on expansion.

You feel there are only a handful of American extremists who would be willing to conquer the Philippines at any cost and then rob the islands of their rich resources. Most Americans only want the United States to provide a few years of humane, parental guidance until the Filipinos can stand on their own feet. But if independence is our final goal for Filipinos, why are we killing them now? Are we killing them only because they want independence now instead of later? There are those who say we must teach the Filipinos how to become independent. You can't teach a child to walk by crawling and stumbling for him. You have to let him learn for himself.

Some people say that we need the Philippines for trade. We don't have to own the islands to trade with them. Besides, the cost of maintaining American rule there is much higher than the trade is worth. If we're only interested in the Philippines as a stepping stone to Asia, it would be much cheaper and easier to bargain with a Philippine government for the use of a naval station there.

The argument that we have some kind of "Manifest Destiny" that obligates us to rule the Philippines is sheer nonsense. Manifest Destiny is just a high-flown phrase for brute force. The Spanish-American war was a national disgrace. We pledged ourselves to help the Filipinos and then betrayed their trust. Our national honor and self-respect are at stake here.

You ask the committee to reject the false patriotism of those who say "Our country, right or wrong." Put America in the right by voting against imperial rule over the Philippines.

Samuel L. Clemens, Author

You are a licensed river pilot, journalist, lecturer, and author of numerous well-known novels, including The Innocents Abroad and The Adventures of Huckleberry Finn. You have had a number of overseas assignments, including time spent in the Sandwich Islands (Hawaii) as a roving reporter. You have a great love for frontier America, its independent spirit and natural simplicity. You dislike American efforts to copy European ways. You are bitter and disappointed by America's actions in the Philippines and wish to express these feelings at the Senate hearing on the Treaty of Paris.

Uncle Sam is doing the wrong thing by trying to play high stakes poker in Asia. He should stick to the kind of game he knows he can win. Take Cuba for example. There you had a small, friendless country, willing to fight for its own freedom. All Uncle Sam had to do was offer to go partners and he couldn't lose. The big guns of Europe had to back off, and Uncle Sam came out with all the credit for saving poor little Cuba from Spanish tyranny.

Then Uncle Sam got a chance to gamble for the Philippines. If he had played his cards right, he would have come out ahead there, too. The headlines would have read, "Uncle Sam Liberates the Filipino Slaves." But no, he blew his hand. He tried to play the game the way Europeans do, trying to be the empire-builder.

Last May Uncle Sam whipped the Spanish fleet in Manila Bay. He could have left right then. Thirty thousand Filipino patriots were perfectly capable of starving out the few remaining Spaniards. Instead he formed an alliance with the Filipinos and said we'd help them drive the Spaniards out. What did the Filipinos get for all their effort? Independence? No. In return they got American tyranny. The only thing Uncle Sam won in the Philippines was the hatred of the Filipinos and the reputation of a European despot.

Now the Senate has a chance to correct Uncle Sam's mistake. The proposal to annex the Philippines is a ridiculous attempt to play the European game. The Senate should set America back on the right course by saying no to annexation and giving the Philippines their justly earned independence.

George F. Hoar, Republican Senator from Massachusetts

You have had a long, active political life. You were one of the founders of the Republican party. Now, in your old age, you find that you must go against President McKinley and the Republican party for the first time in your career. You feel that the idea of annexing the Philippines is an example of "might makes right." You also feel that the Constitution forbids America from annexing territories unless they can become states.

The most important question for the committee to consider is whether or not America has the right to govern 10 or 12 million subjects without observing the rules established by its own Constitution.

The Constitution sets very clear limits on the powers of our government. You will find that the Constitution does not make any provision for our government to conquer or rule others. The reason it makes no provision for this is that such actions by America are wrong and immoral.

Some people say we have a perfect right to acquire new territories. It is true that we do have that right, but only within certain limits set by the Constitution. The Constitution allows us to add territory that we need for defense purposes. It also allows us to admit new states or organized territories that will eventually become states. But there is a big difference between adding land and conquering a foreign poeple and subjecting them to American rule without their consent. The Constitution permits us to rule non-U.S. citizens on a temporary basis only, while they prepare for citizenship.

Our founding fathers never intended to give us a license to build a colonial empire. One only has to read the Declaration of Independence to know where those gentlemen stood on the question of foreign rule. Independence is what they stood for. If they were here today, they would be horrified to learn that we speak of throwing away their ideals for the chance of a little extra trade or the cheap glory of strutting around in an emperor's uniform.

Handout 26-5

INSTRUCTIONS TO THE OBSERVERS

You are an undecided Senator who is attending the Foreign Relations Committee hearing to learn more about the issues involved in the Senate ratification (approval) of the Treaty of Paris. Use this form to take notes on the testimony of each witness. Try to think about what is said that makes you either agree or disagree that the Philippines should be annexed. You will be asked to vote on ratification. Be ready to explain your vote, being specific about particular facts that helped to influence your decision.

1. Admiral Alfred T. Mahan: ____________________

2. Reverend Josiah Strong: ____________________

3. Albert J. Beveridge, Attorney at Law: ____________________

4. Henry Cabot Lodge, Republican Senator from Massachusetts: ________

5. Professor William G. Sumner, Yale: ____________________

6. Carl Schurz, Journalist: ______________________________

7. Samuel L. Clemens, Author: ______________________________

8. George F. Hoar, Republican Senator from Massachusetts: __________

Your Decision: ______________________________

Your Reasons: ______________________________

27. SHOULD MEN HAVE THE VOTE?

Introduction:

This short activity can be used in a study of women's suffrage and the Nineteenth Amendment. Its reverse sex stereotyping will provide an opportunity for lively class discussion.

Objectives:

1. To increase understanding of equality under the law.

2. To enhance awareness of the implications of a power monopoly by one sex.

Level: Grade 8 and above

Time: One-half class period

Materials: Copies of Handout 27-1 for all students

Procedure:

1. Distribute Handout 27-1 and have students read Alice Miller's argument.

2. Solicit student comments and discuss the questions that follow the argument.

3. Divide the class into groups of four or five students. Tell students to imagine a society in which women are the only persons allowed to vote, to hold political office, and to occupy positions of economic power. Have the small groups consider the following questions:

--Would everything be turned around, with men being discriminated against as women have been?

--Would things be pretty much the same as they are now?

--Some say present society is designed for the convenience of men. How would society look if it were designed for the convenience of women?

SHOULD MEN HAVE THE VOTE?

WHY WE OPPOSE VOTES FOR MEN

1. Because man's place is in the army.
2. Because no really manly man wants to settle any question otherwise than by fighting.
3. Because if men should adopt peaceable methods women will no longer look up to them.
4. Because men will lose their charm if they step out of their natural sphere and interest themselves in other matters than feats of arms, uniforms and drums.
5. Because men are too emotional to vote. Their conduct at baseball games and political conventions shows this while their innate tendency to appeal to force renders them particularly unfit for the task of government.

Alice Duer Miller, 1915

Questions for Discussion

1. Why is Miller's argument so effective?

2. Do you think sex stereotyping of women is as extreme as the sex stereotyping of men in Miller's argument?

28. SCHENCK V. UNITED STATES (1919)

Introduction:

The boundaries of free expression during wartime are the issue in this landmark World War I free speech case. The activity is presented as a writing exercise based on the case study method, but a variety of alternative strategies could be employed (e.g., teacher-directed discussion, adversary model, moot court). It is recommended that this case be used when studying World War I and the Selective Service Act of 1917. It might also be used when studying the First Amendment. Note that Activities 11 and 34 also focus on the boundaries of free expression.

Objectives:

1. To enhance understanding of interpretations of the First Amendment guarantee of freedom of speech.

2. To increase awareness of the influence of political events on interpretations of constitutional freedoms.

3. To develop understanding of constitutional arguments for and against selective service.

4. To enhance reasoning and writing skills.

Level: Grade 11 and above

Time: One class period

Materials: Copies of Handouts 28-1 through 28-3 for all students

Procedure:

1. Distribute Handouts 28-1 and 28-2. Have students read the case, recording the important facts and issues on the case study sheet (Handout 28-2). Discussion of the facts and issues can take place either before or after students write them.

2. Take a vote to see (1) how students would decide the case and (2) how students believe the court decided the case.

3. Pass out Handout 28-3. Have students read the decision and complete the case study sheet.

4. Explain that the Holmes decision was important in that it established a standard or test, the "clear and present danger" test, for future free speech cases.

5. As a follow-up discussion, discuss views on the draft during the Vietnam era and currently.

SCHENCK V. UNITED STATES (1919)

World War I began in 1914. By the time the United States declared war in 1917, the war effort was not going well for our allies. The English and French could not take the offensive against Germany. The Russians were torn by their internal revolution. A massive effort was needed to insure an allied victory.

To provide the men needed, Congress passed the Selective Service Act of 1917, thereby creating a military draft. In order to protect the war effort, Congress also passed the Espionage Act of 1917. Among other things, the act made it a crime to cause or attempt to cause insubordination in the military and naval forces or to obstruct the recruitment or enlistment of persons into the military service of the United States.

Charles Schenck was an American who was deeply opposed to United States participation in the war. He was the general secretary of the Socialist Party and was arrested for violating the Espionage Act after leaflets urging resistance to the draft were traced to Socialist headquarters.

The leaflet had been sent to men who had been drafted. On the front, it quoted the first section of the Thirteenth Amendment. It said that a draftee was little better than a convict. In impassioned language, it suggested that conscription was despotism in its worst form and a monstrous wrong against humanity, in the interest of Wall Street's chosen few. It said: "Do not submit to intimidation." In form, at least, the leaflet confined itself to peaceful measures, such as a petition for the repeal of the act.

The other, later-printed side of the sheet was headed, "Assert Your Rights." It stated reasons for alleging that anyone violated the Constitution when he refused to recognize "your right to assert your opposition to the draft." It went on: "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." It described the arguments on the other side as coming from cunning politicians and a mercenary capitalist press. Even silent consent to the draft law was described as helping to support an infamous conspiracy. It denied the power to send U.S. citizens away to foreign shores to shoot up the people of other lands, and added that words could not express the condemnation such cold-blooded ruthlessness deserved. The leaflet concluded, "You must do your share to maintain, support, and uphold the rights of the people of this country."

Although Schenck denied responsibility for sending the leaflets, the trial court was presented enough evidence to convince it that he had. After Schenck was found guilty in a federal district court in Pennsylvania, he appealed his conviction, claiming that the leaflets should be protected as free speech. The government maintained that the Espionage Act had been a valid and necessary limit on speech. The Supreme Court handed down its ruling in 1919.

CASE STUDY SHEET

Case Name ______________________________

Court ______________________________

Decision Date ______________________________

Facts:

Legal Issues:

Decision:

Court's Reasoning:

Student's Comment:

DECISION - SCHENCK V. UNITED STATES

Mr. Justice Holmes wrote for a unanimous court, which affirmed Schenck's conviction.

> ...The document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out... We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.

SECTION IV

THE MODERN ERA

29. THE SUPREME COURT, ROOSEVELT, AND THE NEW DEAL

Introduction:

President Franklin D. Roosevelt's attempt to "pack" the Supreme Court in the 1930s in order to win favorable review of his New Deal legislation is an historical episode that illustrates the relationship and tensions among the three branches of government. This learning stations activity allows students to critically examine the factors and events surrounding Roosevelt's efforts to change the composition of an unsupportive Supreme Court. The activity can be used when studying the 1930s and the National Recovery Act.

Objectives:

1. To increase knowledge of the relationship among the three branches of government.

2. To reinforce understanding of judicial review.

3. To examine the factors that led to Roosevelt's court-packing plan.

4. To enhance group process and critical thinking skills.

Level: Grade 11 and above

Time: One to two class periods

Materials: One copy of Handout 29-1; copies of Handouts 29-2 and 29-3 for all students

Procedure:

1. Before class, cut apart the 19 items on Handout 29-1; mount them on colored paper, and post them along the walls of the classroom. These will be the learning stations.

2. Pass out Handout 29-2. Read and discuss it with the class, making sure students understand Roosevelt's proposal.

3. Divide the class into pairs. Distribute Handout 29-3, reading through the instructions with the students.

4. Allow students to proceed to stations.

5. When students have completed Handout 29-3, discuss their responses. Conclude with a discussion of the following question:

--What advice would you have given President Roosevelt concerning his court proposal if he had asked your opinion in the early summer of 1937?

EVENTS AND FACTORS

1. Roosevelt not only surprised the nation with his court proposal in February 1937, but he also surprised many of his close advisors and key members of Congress. The President did not organize strategic support for his plan before announcing it on February 5.

2. The number of justices serving on the court has varied. The original court had six justices. In 1807 there were seven; in 1837, nine; in 1863, ten; in 1866, eight; and in 1869 nine once again.

3. Roosevelt was a very popular President. His "New Deal" was also popular with voters.

4. Roosevelt claimed that the courts were overburdened and overworked. The additional judges he would appoint under the plan would help solve these problems and make the courts more efficient.

5. Most judges and local bar associations (organizations of lawyers) were against Roosevelt's plan.

6. The rulings of the Supreme Court, especially its voiding both state and federal efforts to enact a minimum wage, were very popular.

7. One anti-New Deal justice announced in mid-May that he would retire on June 1, 1937. Roosevelt would, at last, be able to appoint someone to the court.

8. Opponents of the New Deal's economic and social policies turned public attention to the potential threat to judicial independence contained in FDR's plan.

9. Some people argued that the most dignified and safest way to alter the Supreme Court was by Constitutional amendment and that Roosevelt's plan was devious.

10. The Constitution created the Supreme Court but left many important decisions about it to the Congress. For example, Congress determines both the size and the appellate power of the court. It would be constitutional for Congress to change either.

11. The plan was perceived by many as a thinly disguised effort to change the decisions of the Supreme Court rather than to make any truly needed reforms.

12. Chief Justice Hughes and Justice Brandeis wrote a letter to the chairman of the Senate Judiciary Committee, which was considering the bill. With statistics, the letter refuted Roosevelt's claims that the Supreme Court was overburdened because of "insufficient personnel" and the physical disabilities of the justices.

13. The number of justices serving on the Supreme Court had been fixed at nine for almost 70 years.

14. Most Americans, however they might disapprove of some of the Supreme Court decisions, revered the court as an institution. Most people believed that an independent judiciary was a necessary element of American government and that it should exercise judicial review and thereby guard the Constitution.

15. The Congress was controlled by huge Democratic majorities. Roosevelt was a Democratic President.

16. On March 29, 1937, the court announced an opinion that had been reached before Roosevelt's court proposal was made public. The Supreme Court upheld a minimum wage law like those that in the past had been found unconstitutional.

17. The Supreme Court began supporting New Deal legislation. In April the Wagner Act was upheld. In May and June the court sustained the Social Security and Unemployment Insurance Legislation.

18. The President's plan grievously offended the court's most liberal, most pro-New Deal, and, coincidentally, oldest member, Justice Brandeis.

19. Even Democrats in Congress were worried that their approval of the President's plan would tip the balance of power among the three branches of government in favor of the President.

THE SUPREME COURT, ROOSEVELT, AND THE NEW DEAL

In the darkest period of the economic disaster known as the Great Depression, 25 percent of the American work force was unemployed. Banks failed and businesses collapsed. Farmers, unable to make their mortgage payments, lost their farms. The stock market crashed, and thousands of Americans lost their life savings. Americans were bewildered and angry. They wanted a return to prosperity and, in 1932, elected a new President who radiated confidence and promised action to end the Depression.

Franklin Delano Roosevelt's first hundred days as President were marked by furious legislative activity. The new President sent measure after measure to the Congress, and his bills met almost no organized opposition in either house of Congress. The President's legislative program was collectively called the New Deal. It contained measures to offer relief from depression-caused hardship, encourage economic recovery, and institute reforms to help prevent another severe depression.

Throughout Roosevelt's first term, the President exercised leadership over the Congress, and the two branches worked cooperatively to make changes in the American economy. The third branch of government, the judiciary, did not have an opportunity to become involved in the New Deal until the middle of Roosevelt's first term. Remember that the Supreme Court only hears actual cases and controversies. Therefore, the President, the Congress, and the people had to wait until a person with standing to sue challenged a New Deal law before anyone could know whether the court would uphold the new laws as constitutional.

In the winter of 1934-1935, the answers to the questions of whether the New Deal was a radical and unconstitutional departure from traditional governmental involvement in the economy began to come. The Supreme Court approved parts of the New Deal but struck down many important New Deal measures. Besides voiding the National Industrial Recovery Act and the Agricultural Adjustment Act, the court declared both federal and state attempts to establish minimum wages unconstitutional. Never before had a Supreme Court majority taken on almost the entire governmental program of a powerful President who was solidly backed by Congress and vetoed the program law by law. The court showed the President and Congress what a powerful check judicial review could be.

During the Presidential election campaign of 1936, the Supreme Court's actions became a hotly debated issue. The Democrats emphasized the narrow court majorities that had killed the New Deal laws and said the court's interpretations of the laws were fit for "horse-and-buggy" times, not for a modern nation facing a crisis. The Republicans defended the court's decisions and characterized Roosevelt as having contempt for

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From Supreme Court and FDR. Used with permission from the Law in a Changing Society Project, Dallas, Texas.

the Constitution. Roosevelt argued that the justices had taken the Constitution and were "torturing its meaning, twisting its purposes to make it conform to the world of their outmoded beliefs." At the same time the Supreme Court was praised by anti-Roosevelt forces for its courageous defense of the "whole philosophy of individual liberty" and for its opposition to "so great a power over the lives of millions of men lodged in the hands of a single fallible being."

Apparently, the New Deal was widely accepted by American voters, for when the votes were counted in the Presidential election of 1936, Roosevelt won every state except Vermont and Maine and swamped his Republican opponent by more than ten million votes.

Roosevelt interpreted his landslide victory as a mandate for further reforms. With his personal popularity and prestige and his huge congressional majorities, only the Supreme Court appeared to stand in his way. Most presidents are able to influence the court through their appointments, but during Roosevelt's first five years in office, no justice had died or retired. Roosevelt was confident that the people approved of his policies, but would they approve of his efforts to restructure the Supreme Court?

Just two weeks after his second inaugural speech, Roosevelt sent a proposal to Congress. It was called a "court reform" measure by its supporters, while its opponents called it an effort to "pack the court." Simply stated, Roosevelt's bill provided that whenever a federal judge who had served ten years or more failed to retire within six months after reaching his 70th birthday, the President could appoint an additional judge. This additional judge would be assigned to the same court on which the older jurist was serving. No more than 50 such additional judges could be added to the entire federal judicial system, and the maximum number of Supreme Court justices was set at 15.

The Supreme Court was frequently characterized as the Nine Old Men. In 1937 that was an accurate if unflattering description. The youngest justice was 62; the oldest, 81. All four of the justices who had regularly voted against the New Deal measures were over 70. The intended effect of Roosevelt's court proposal was obvious, even if the President emphasized other reasons for supporting his bill.

Would the Congress agree to the changes Roosevelt urged? What would the court do? How would the general public respond? If you had been alive in 1937, how do you think you would have felt about Roosevelt's plan?

PREDICTING THE FATE OF ROOSEVELT'S COURT PROPOSAL

Choose a learning station that is open. With your partner, read the item posted. Discuss it briefly and decide whether it probably encouraged or discouraged adoption of President Roosevelt's plan to enlarge the Supreme Court. Copy the item (or an abbreviated version of it) under the appropriate heading on this sheet. After you have visited all 19 learning stations, review the factors and events. Also consider what you read in "The Supreme Court, Roosevelt, and the New Deal" (Handout 29-2). Decide which two events or factors were most encouraging to President Roosevelt and which two were most encouraging to those who opposed his plan for the courts.

Events or Factors Favorable to Roosevelt and His Plan	Events or Factors Unfavorable to Roosevelt and His Plan

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30. THE SUPREME COURT AND FDR: INTERPRETING POLITICAL CARTOONS

Introduction:

In this activity, students practice their skills in reading and interpreting political cartoons. After cartoons drawn during Roosevelt's attempt to pack the court have been analyzed, students produce a cartoon of their own. All the cartoons presented in this activity are based on the originals in the Franklin D. Roosevelt Library. This activity can be used when studying the New Deal; it can be used in conjunction with Activity 29.

Objectives:

1. To increase understanding of Roosevelt's attempt to expand the judicial system.

2. To increase skills in interpreting political cartoons.

Level: Grade 11 and above

Time: One or two class periods

Materials: One copy of Handout 30-1; copies of Handout 30-2 for all students; overhead projector

Procedure:

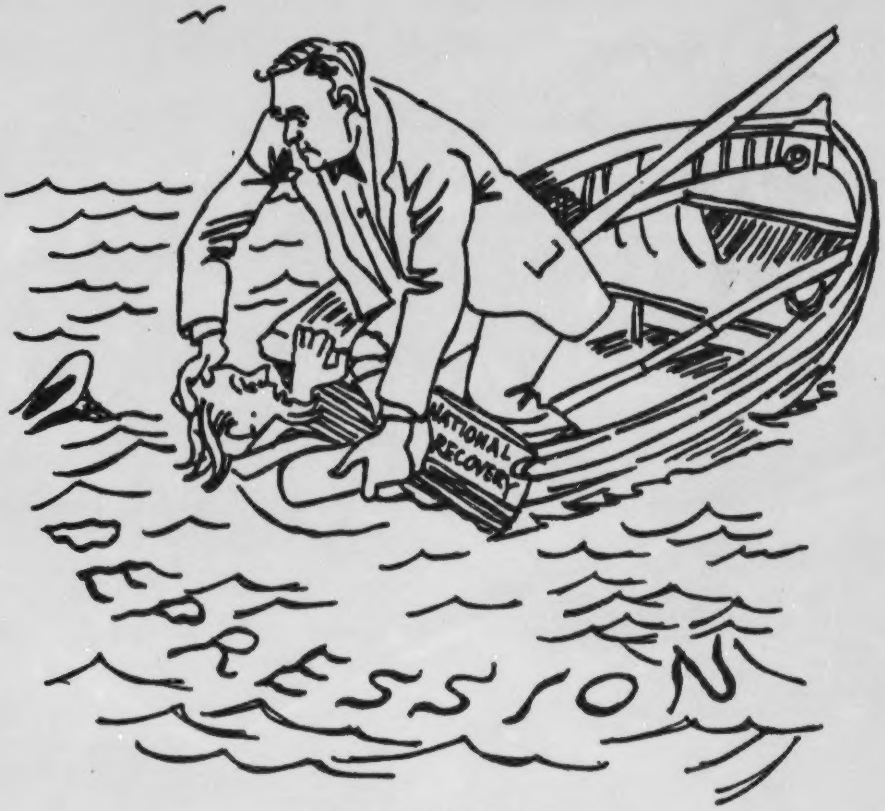
1. Divide the class into nine groups. Give each group one cartoon from Handout 30-1. Have the groups discuss their cartoons, using the questions to guide their analysis. Explain that each group will present a short report to the class.

2. Using the overhead projector, have each group report. Have them (1) describe the cartoon and (2) discuss the questions.

3. Pass out Handout 30-2 to all students. Read and discuss it with the class.

4. Have the original groups or pairs of students use the figures provided in Handout 30-2 to prepare a cartoon of their own, complete with caption, expressing their interpretation of how the court-packing issue was resolved. They may add figures or alter the figures to best express their attitudes.

5. Have groups show their cartoons on the overhead projector and discuss them.



THE ILLEGAL ACT.

President Roosevelt: "I'm sorry, but the Supreme Court says I must chuck you back again."

1. Who is the drowning man?

2. Who is the man in the boat?

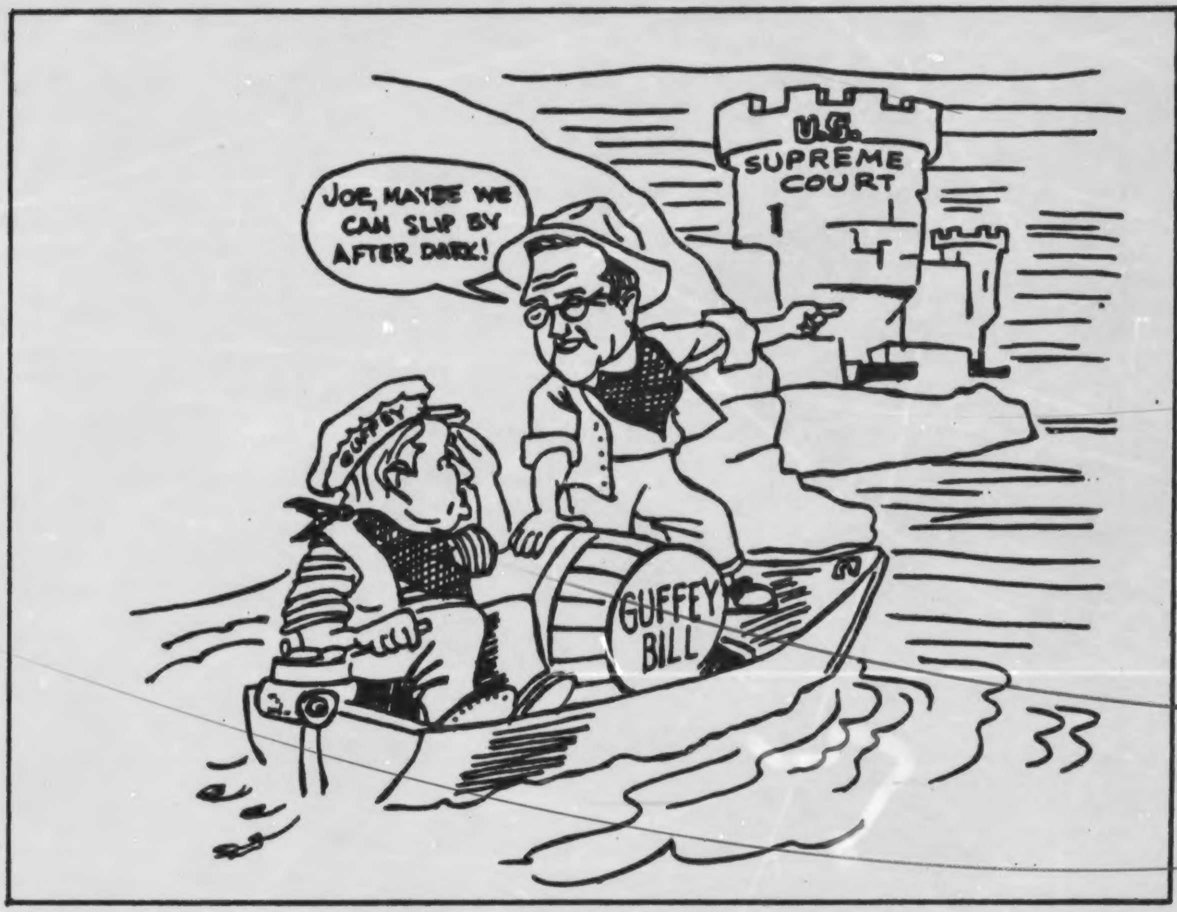
3. What is meant by the labels on the boat and in the water?

4. What point is the artist attempting to make through the drawing and caption?

5. What event might have inspired this cartoon?

6. Do you agree or disagree with the artist's point of view? Why?

From Supreme Court and FDR. Used with permission from the Law in a Changing Society Project, Dallas, Texas.



The Guffey Bill, named for its sponsor, was designed to regulate production, prices, and wages in the bituminous coal industry. A case involving the constitutionality of the Guffey Coal Act was heard by the Supreme Court in 1936. The court had already declared many other key New Deal laws unconstitutional.

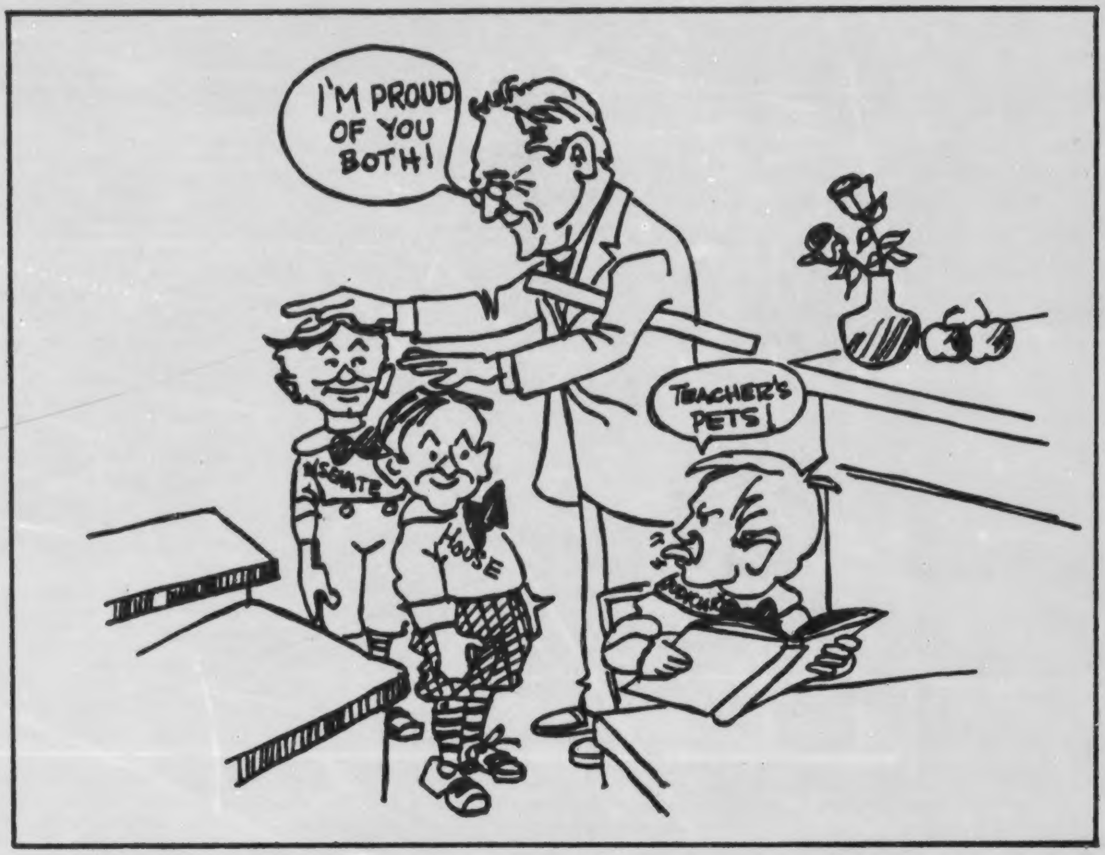
1. Identify the characters in the cartoon.

2. What is the relationship between the two men in the boat?

3. What is the relationship between the occupants of the boat and the fortress?

4. What is the meaning of the statement in the balloon?

5. How do you think the artist felt about the Guffey Bill? About the Supreme Court?



A cartoon like this appeared in January 1937, the month before Roosevelt announced his plan to enlarge the Supreme Court.

1. Identify each character in the cartoon.

2. Who is Roosevelt supposed to be in the cartoon?

3. Why are the two little boys smiling?

4. Why is Roosevelt so much larger than the other two characters?

5. Why is Roosevelt saying, "I'm proud of you both!"?

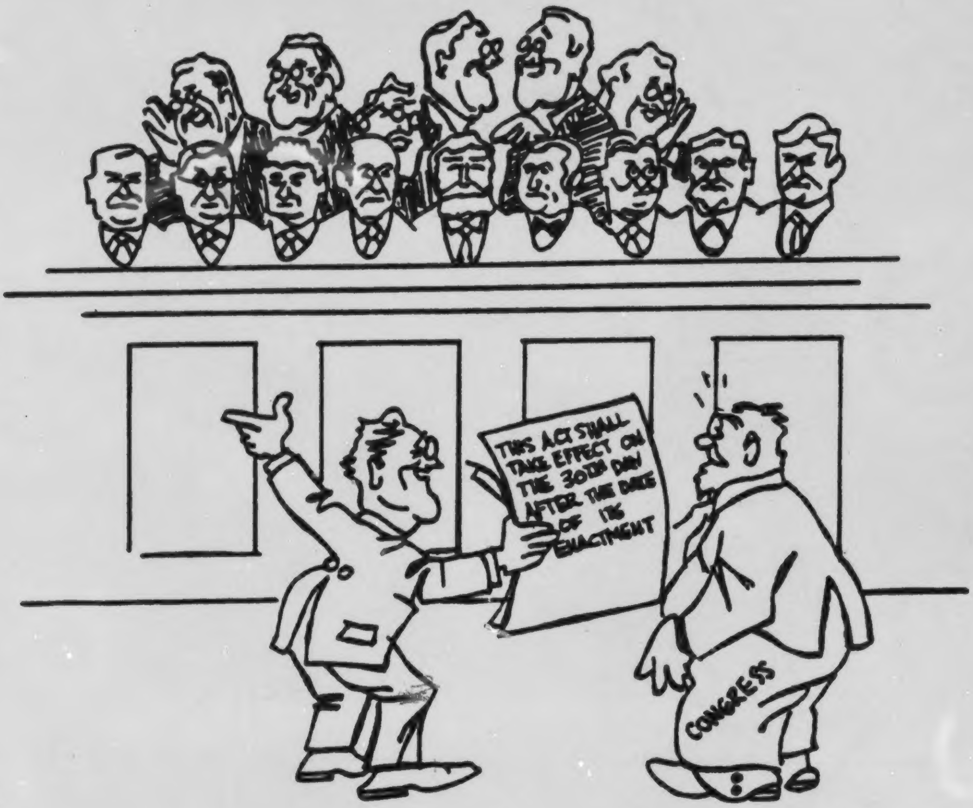
6. Why is the other little boy sticking out his tongue and saying, "Teacher's Pets!"?

7. What is the artist attempting to say with this drawing?

8. Can you think of any historical events or facts that support the artist's message? What are they?

9. Do you agree or disagree with the artist's viewpoint?

10. In keeping with the artist's point of view, what change could you suggest that might reflect the way things were in January 1938?


THIS ACT SHALL TAKE EFFECT ON THE 30TH DAY AFTER THE DATE OF ITS ENACTMENT
CONGRESS

"To Furnish the Supreme Court Practical Assistance."

A cartoon like this appeared shortly after Roosevelt sent his plan to Congress.

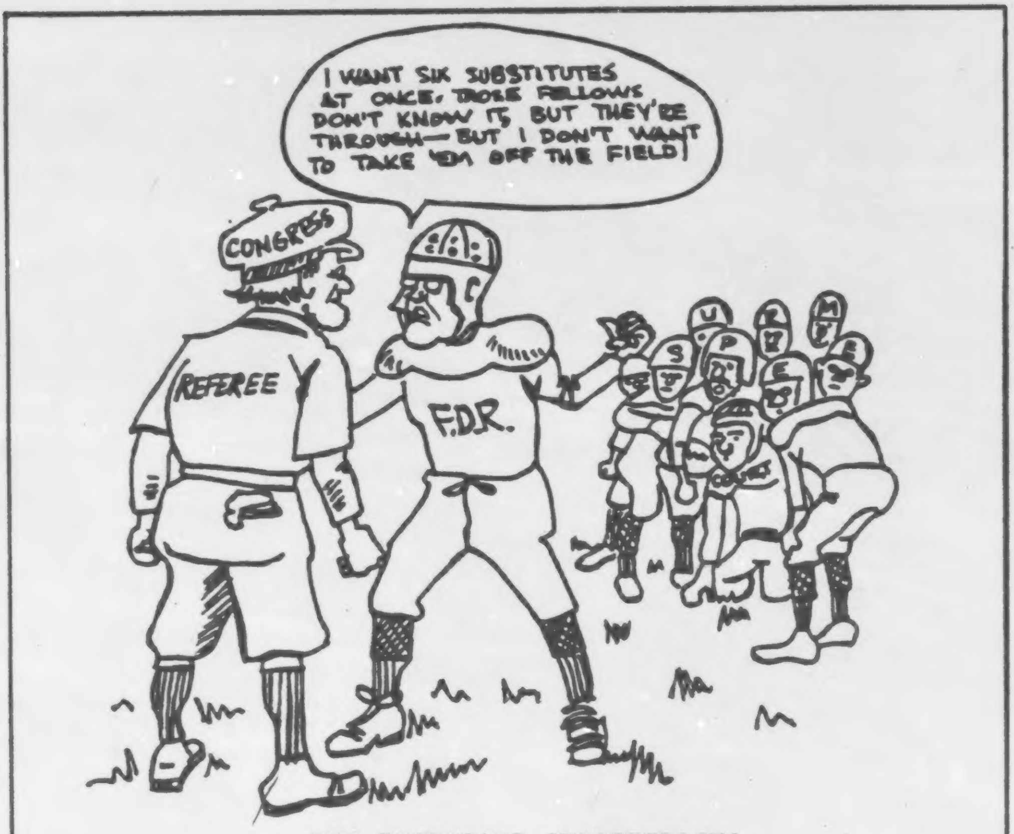
1. Who are the men on the front row of the Supreme Court's bench?

2. Describe the expressions on the faces of the two characters in the foreground. Identify both of them.

3. What is the relationship of the men on the back row to those on the front row of the Supreme Court bench?

4. What is the central theme of this cartoon?

5. The artist probably wants those who see his cartoon to _____.


I WANT SIX SUBSTITUTES AT ONCE. THOSE FELLOWS DON'T KNOW IT, BUT THEY'RE THROUGH—BUT I DON'T WANT TO TAKE 'EM OFF THE FIELD!
CONGRESS
REFEREE
F.D.R.
S
U
P
R
E
M
E

THE INGENIOUS QUARTERBACK!

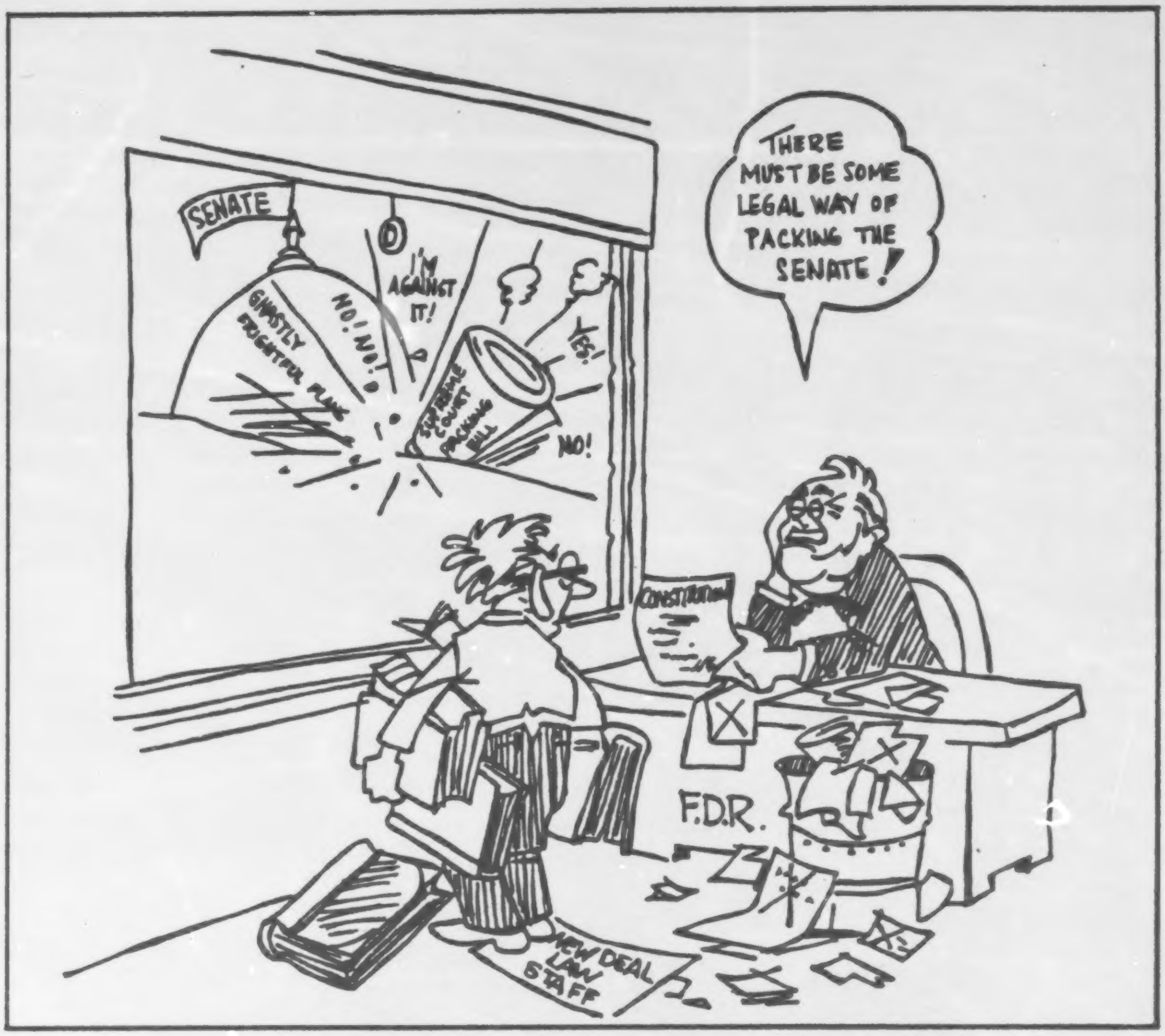
1. Identify the characters in the cartoon.

2. Explain the relationships between
   --the quarterback and his team
   --the referee and the players
   --the quarterback's request and the rules of the game

3. In what ways was the Congress acting like a referee in 1937?

4. How do you think the artist felt about Roosevelt's plan to enlarge the Supreme Court?

5. Do you agree or disagree with the artist's point of view?



1. Who are the two men in the drawing?

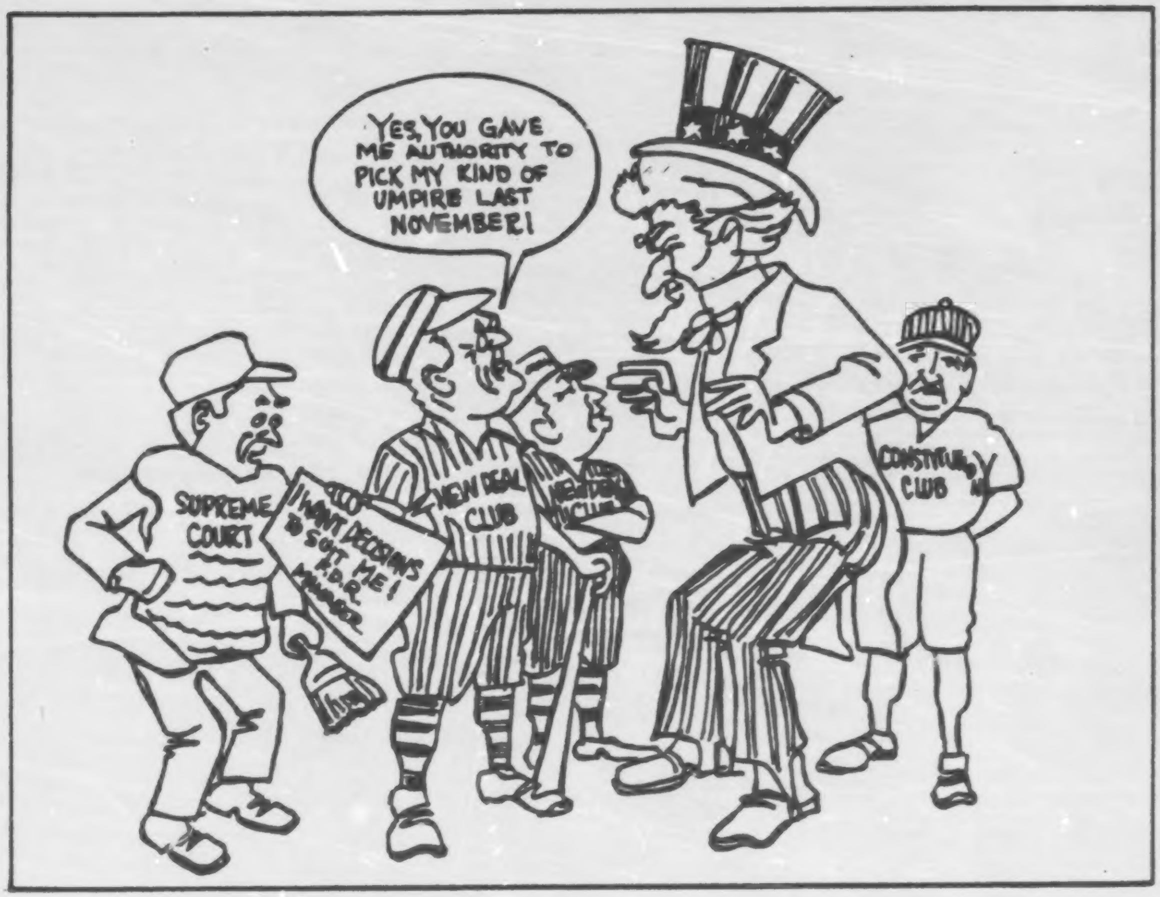
2. What is the relationship between the two men?

3. Why are there books and papers scattered everywhere?

4. What is the relationship between the man at the desk and the Senate?

5. Why is the man at the desk asking that question?

6. What does the question tell you about the artist's point of view regarding Roosevelt?


YES, YOU GAVE ME AUTHORITY TO PICK MY KIND OF UMPIRE LAST NOVEMBER!
SUPREME COURT
I WANT DECISIONS TO SUIT ME! F.D.R. MANAGER
NEW DEAL CLUB
NEW DEAL CLUB
CONSTITUTION CLUB

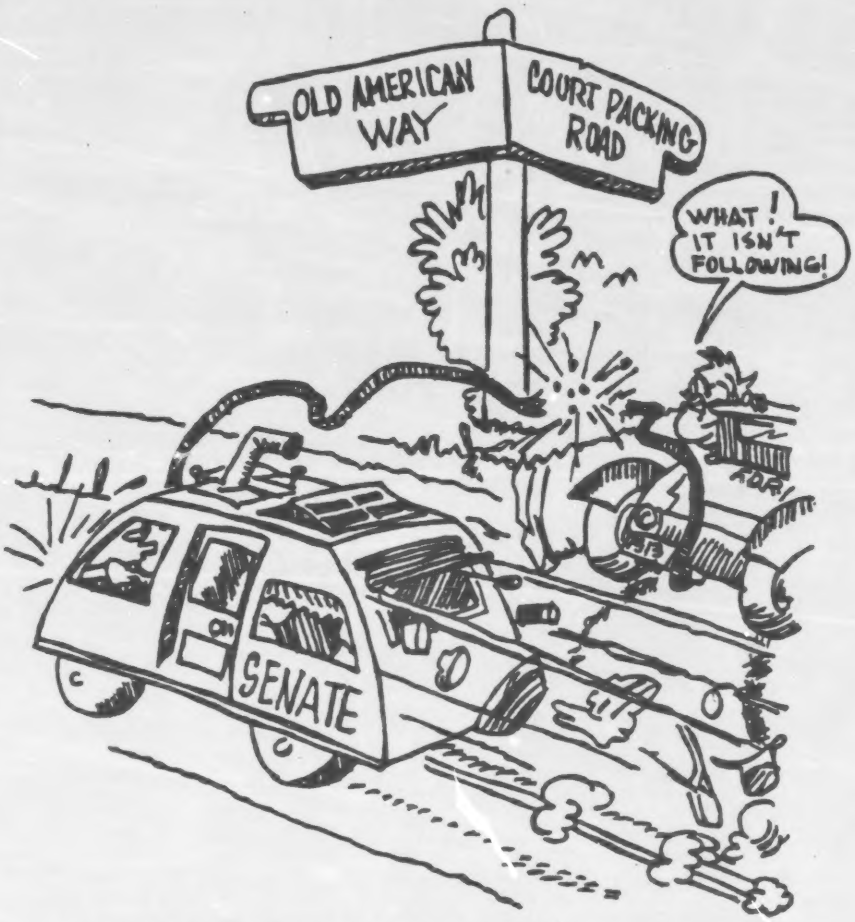
1. Identify each person in the cartoon.

2. The cartoon draws an analogy between the "court-packing" episode and a baseball game. What is the relationship between
   - --an umpire and the Supreme Court?
   - --a club manager and President Roosevelt?

3. What is meant by the statement to Uncle Sam?

4. What message was probably intended by the artist's decision
   - --to label the opposing club "Constitution Club"?
   - --to give the umpire a startled expression?

5. How do you feel about the artist's point of view? Do you agree or disagree with it?



THE OLD TRAILER DISCOVERS THAT
IT HAS POWER OF ITS OWN.

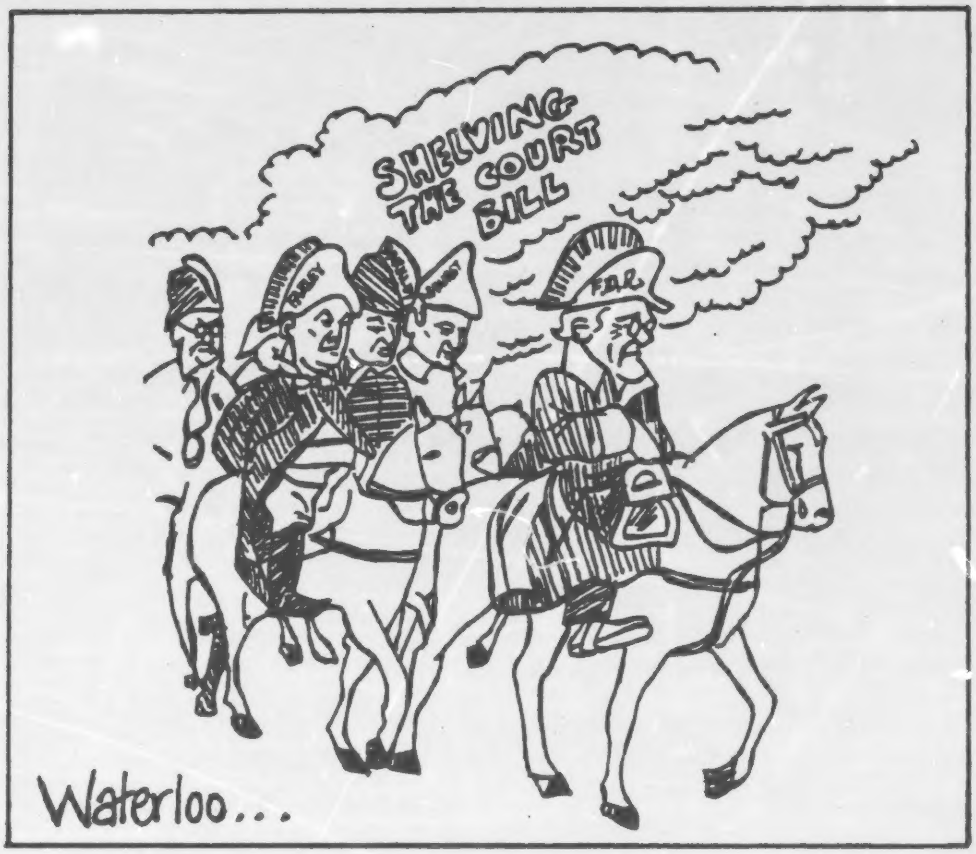
1. Describe all the things you see in this drawing.

2. What is the normal relationship between a car and trailer? What is symbolized by this representation of their relationship?

3. What is meant by the two signs on the post?

4. When did this cartoon probably appear?

5. What is the central theme of the drawing?


SHELVING THE COURT BILL
FARLEY
F.D.R.
Waterloo...

1. Who is leading the retreat?

2. What is represented by the low, threatening storm cloud?

3. The men behind Roosevelt are some of his top advisors. Can you identify any of them?

4. Who is Roosevelt supposed to resemble in this cartoon? What is the meaning of the caption?

5. Was the action by Congress a disastrous defeat for Roosevelt? Why or why not?

THE ARGUMENT RESOLVED

Roosevelt's plan to enlarge the Supreme Court was rejected by Congress. Scholars still disagree about which of the many reasons best explain the defeat. Some have emphasized Roosevelt's failure to organize key supporters for his plan before announcing it and his failure to correctly anticipate the reverence most Americans had for the Supreme Court. Others say that the biggest factor in the plan's defeat was the sudden about-face by the Supreme Court itself. In early 1937 the court, again by narrow majorities, began upholding laws favored by Roosevelt. One humorist called this "the switch in time that saved nine."

In the six years that followed, the Supreme Court did not strike down a single act of Congress as being unconstitutional. Before Roosevelt's death, he was able to appoint seven new justices to the Supreme Court. Factors like these led some to say that Roosevelt may have lost a battle but won the war.

Nevertheless, the outcome of this court-packing or court reform episode can also be viewed as a victory for the court, since its structure was not and has not been altered since. Still others emphasize that 1937 was a turning point for Congress and that when that body rejected Roosevelt's plan, it asserted its own independence and power. It is also true that after 1937 the Congress was much less willing to completely follow the President's lead than it had been when Roosevelt first took office.

What do you think? Was there a winner or a loser in the fight over Roosevelt's plan? Use the symbols on the next page, as well as any symbols you want to draw. Arrange them into a cartoon that will tell your audience how the court-packing/court reform episode ended and how you feel about it.

From Supreme Court and FDR. Used with permission from the Law in a Changing Society Project, Dallas, Texas.

Handout 30-2

31. THE JAPANESE RELOCATION IN WORLD WAR II: *TOYOSABURO KOREMATSU V. UNITED STATES* (1944)

Introduction:

The relocation of Japanese-Americans during World War II is a highly controversial episode in American history. This simulation of the famous Korematsu case allows students to explore in depth the pros and cons of Executive Order No. 9066 and to examine the historical circumstances that led to such a devastating curtailment of the Fourteenth Amendment rights. This activity can be used when studying World War II. It can also be used in conjunction with the novel *Farewell to Manzanar*. Comparisons can be drawn with *Schenck v. United States* (Activity 28), which also dealt with the theme of individual rights vs. national security.

Objectives:

1. To develop understanding of the events that led to the relocation of Japanese-Americans during World War II.

2. To apply the guarantees of the Fourteenth Amendment to the facts of the Korematsu case.

3. To reinforce understanding of other constitutional guarantees as they apply to the case.

4. To develop understanding of the issues and arguments involved in the Korematsu case.

5. To reinforce argumentation, reasoning, chronology, and group process skills.

Level: Grade 11 and above

Time: Two class periods

Materials: Copies of Handouts 31-1 through 31-5 for all students

Procedure:

1. Pass out Handouts 31-1 and 31-2 and read them with the class. Use the case study method to review the facts and issues of the case. Discuss questions and review the chronology of events.

2. Explain that students will be put into groups of three. One student will play the role of attorney for Korematsu, one the role of attorney for the U.S. government, and one the role of the judge. The attorneys will develop arguments for their sides and present them to the judge, who will make a decision. Explain that the groups will conduct their simulations simultaneously.

3. Assign roles. Allow attorneys time to prepare arguments. Use Handouts 31-3 and 31-4 with students who require special assistance in preparation.

4. While attorneys are preparing, meet with judges and instruct them to read over the case and prepare questions for attorneys. Explain that they should conduct the simulation as follows:

--Allow attorney for Korematsu five minutes to present argument.

--Allow attorney for U.S. government five minutes for argument.

--Allow one-minute rebuttal by Korematsu's attorney.

--The judge will deliberate and deliver the decision.

--The judge may interrupt during arguments to ask questions.

5. Conduct the simulations. Make sure groups are spaced so as not to distract each other.

6. Call on each judge for his or her decision and reasoning. Record the decisions on the board.

7. Distribute Handout 31-5 and read the decision with the class. Debrief the activity using questions such as the following:

--For those students serving as judges in the simulation, what argument was most compelling in reaching their decisions?

--Do you think there was sufficient threat to justify the relocation and internment of West Coast Japanese-Americans?

--Do you believe that the limitation of any civil liberty is justified during wartime? Speech? Press? Due process? Freedom of movement?

--In the 40 years since this case, demands by minority groups for equal protection and opportunity and the passage of state and federal antidiscrimination legislation have resulted in different public attitudes about discrimination. In light of contemporary standards, do you think the Supreme Court would rule the same way if it heard the Korematsu case today?

--In 1950, more than $38 million was paid to Japanese-Americans who sued for damages and compensation for loss of property. In 1980 a congressional commission on wartime relocation and internment of civilians was created to investigate the effects of the internment. The commission released a report entitled Personal Justice Denied, which recommended that large sums of money, possibly several billion dollars, be paid in compensation to interned Japanese-Americans or their survivors. Do you think the government should take action on this recommendation? Should the government try to correct what it considers past injustices years later with monetary compensation?

TOYOSABURO KOREMATSU V. UNITED STATES (1944)

In early 1942, America was at war with Japan following the surprise attack on Pearl Harbor. Many Americans feared that Japan might invade the West coast. At this time 112,000 people of Japanese descent lived on the West coast. People feared that some Japanese-Americans would become enemy agents.

Reacting to public pressure, President Roosevelt, with the approval of Congress, issued Executive Order No. 9066 (see page 2). This order authorized the military to declare regions of the West coast as military zones. The military could thus relocate inland all people of Japanese descent--both U.S. citizens and aliens alike. These people were to be taken to mass relocation camps.

Fred Korematsu was a U.S. citizen of Japanese descent who had lived all his life in California. When he received an order to report to a center in preparation for relocation, he refused to go.

Korematsu was arrested by U.S. military police and was convicted of refusing to obey the evacuation order. He was given five years' probation and sent to a relocation camp in Utah.

Korematsu appealed his case to the U.S. Supreme Court. He argued that Executive Order No. 9066 was unconstitutional because it discriminated against Japanese-Americans solely on the basis of ancestry and without any evidence of disloyalty. He also said that he had been deprived of his Fifth Amendment rights of liberty and property "without due process of law."

Questions for Discussion

1. Was there any evidence that Korematsu was disloyal or a threat to U.S. security? Should the loyalty of Japanese-Americans have been a consideration in this case?

2. America was also at war with Italy and Germany. Why do you think German-Americans and Italian-Americans were not treated in the same manner as Japanese-Americans?

3. Should the government be able to exercise greater power or suspend the Bill of Rights during a time of war? Should it have greater power even when not at war if acting in the interest of national security?

EXECUTIVE ORDER NO. 9066

(Issued by the President on February 9, 1942;
passed by Congress on March 21, 1942)

The successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities. Military commanders may at their discretion prescribe military areas and define their extent. From these areas any and all persons may be excluded, and with respect to which, the right of any person to enter, remain, or leave shall be subject to whatever restrictions the military commander may impose at his discretion.

CIVILIAN EXCLUSION ORDER NO. 34

(Issued March 24, 1942)

Those of Japanese ancestry shall:

1. depart from Military Zone One
2. report to and temporarily remain at an assembly center
3. go under military control to a relocation center there to remain for an indeterminate period until conditionally or unconditionally released.

Violation of Exclusion Order No. 34 shall be a misdemeanor punishable by $5,000 fine or one year in jail, or both.

CHRONOLOGY OF EVENTS

December 8, 1941	U.S. declares war on Japan.
February 19, 1942	President issues Executive Order No. 9066.
February 20, 1942	Lt. General De Witt is appointed Military Commander of the Western Defense Command.
March 2, 1942	De Witt creates Military Zones One and Two on the West coast. Persons or classes of persons as the situation may require will be excluded from Military Zone One.
March 2, 1942	Mr. Korematsu is put on notice that his residence is in Zone One.
March 21, 1942	Congress enacts Executive Order No. 9066.
March 24, 1942	De Witt institutes in Zone One an 8 p.m. to 6 a.m. curfew for all persons of Japanese ancestry.
March 24, 1942	De Witt issues Exclusion Order No. 34.
March 27, 1942	De Witt orders that after March 29 no person of Japanese ancestry will be permitted to leave Military Zone One.
May 3, 1942	Exclusion Order No. 34 is put into effect. Persons of Japanese ancestry are ordered to report on May 8 to a designated assembly center for relocation.

ARGUMENTS FOR PETITIONER, TOYOSABURO KOREMATSU

1. The orders violated the due process rights guaranteed to U.S. citizens by the Fifth and Fourteenth Amendments. Japanese-Americans had lost their liberty and their property without any kind of hearing or trial as required by the Constitution.

2. The order violated the Sixth Amendment procedural due process rights of citizens. There had been no charges against the Japanese-Americans; they were unable to call witnesses on their behalf; they had no attorneys and no juries to hear the facts and determine their guilt or innocence.

3. The orders violated the Fourteenth Amendment "equal protection" clause. Japanese-Americans had been treated as a class of citizens rather than as individuals. This action was an act of racial discrimination, which the Fourteenth Amendment was designed to prevent. All citizens of the United States enjoy the equal protection of the law. The order affected thousands of Japanese-Americans who were not involved in sabotage. The government should have gone after those citizens it suspected of spying and not the entire group of Japanese-American citizens. Further, no similar action was taken against the German-Americans or Italian-Americans although the United States was at war with those countries too.

4. The emergency could not be as extreme as Executive Order No. 9066 would lead one to believe. In times of grave national emergency, the President may request a declaration of martial law and citizens' rights may be temporarily curtailed. The President did not do this.

5. It took the government six months to take action to prevent sabotage by Japanese-Americans. The national emergency could not have been as extreme as the government said if it took that long to respond to the "threat."

6. The government failed to prove in any tribunal the disloyalty of Korematsu; therefore, the order is strictly discriminatory. The proper action of the government would have been to conduct loyalty hearings to screen individual Japanese-Americans.

ARGUMENT FOR RESPONDENT, U.S. GOVERNMENT

1. People of Japanese descent living in the Western United States posed the gravest danger to public safety because the nation was at war with Japan. The government has the power to protect itself and that power must be equal to the danger it faces. The government must protect itself from espionage and sabotage.

2. The removal orders issued by the President were issued with the authority of Congress. Congress had enacted Executive Order No. 9066 into law. When Congress declared war on Japan, it gave the U.S. president power to wage war. When the U.S. wages war, it expects to wage war successfully.

3. The government could not easily or quickly determine who among the Japanese-American population was disloyal to the United States. To hold a hearing for each individual would have been impossible; therefore, it was necessary to relocate the entire group.

4. The orders did not violate the Fourteenth Amendment. Precedent for this type of action had been set in a previous case, the Hirabayashi case. In Hirabayashi, the U.S. Supreme Court said imposing an evening curfew exclusively on Japanese-Americans was not a violation of the equal protection clause.

5. The action of the government must be judged solely in the context of war. At any other time, such an action might well be illegal.

DECISION SHEET

All legal restrictions that curtail the civil rights of a single racial group are immediately suspect and must be rigidly scrutinized, though not all of them are necessarily unconstitutional. Pressing public necessity may sometimes justify restrictions on civil rights of a single racial group, but racial antagonism never can. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. When, under conditions of modern warfare, our shores are threatened by hostile forces, power to protect must be commensurate with the threatened danger. Exclusion of persons of Japanese ancestry, including citizens whose loyalty was not questioned, from the West coast war area was within the war power of Congress and the executive as it related to the prevention of espionage and sabotage. The validity of this action under the war power must be judged wholly in the context of war. Like action in times of peace would be lawless.

32. THE McCARTHY ERA OF THE 1950S:
INDIVIDUAL RIGHTS VS. INTERNAL SECURITY

Introduction:

The period after World War II was a time of fear and instability. Hearings were being held in both the Senate and House to investigate disloyalty and Communist presence in government, industry, and the arts. This simulation of a hearing of the House Un-American Activities Committee recreates the climate of the 1950s to help students understand the vital issues which that era raised. To what extent should the First and Fifth Amendments protect political beliefs? How should the guarantees of the Bill of Rights be balanced with the need for internal security? To what extent and under what circumstances should Congress have the power to investigate the political beliefs of citizens?

This simulation is based on the actual testimony of the witnesses included, although these witnesses did not appear together at one hearing. The source of information on each witness is included with the role description for further reference. This activity can be used when studying the period following World War II. Comparisons can be drawn to the Salem Witch Trials (Activity 2) and the Alien and Sedition Acts (Activity 17).

Objectives:

1. To develop understanding of the political climate that gave rise to the McCarthy era.

2. To examine the role of the House Un-American Activities Committee and McCarthy's Senate Committee in investigations of disloyalty.

3. To examine the boundaries of the First Amendment guarantee of free speech with respect to political beliefs.

4. To examine the constitutional protection against self-incrimination.

5. To explore the issue of individual rights vs. the need for internal security.

Level: Grade 11 and above

Time: Two class periods or more

Materials: Copies of Handouts 32-1 through 32-3 for all students; seven to nine copies of Handout 32-4; a sign for each role (students can make these during the preparation period)

Procedure:

1. Pass out Handout 32-1. Ask students to read (this can be assigned as homework) and discuss.

2. Distribute Handout 32-2. Explain that students will enact a hearing of the House Un-American Activities Committee. Explain and assign roles to students.

3. Distribute Handout 32-3 to the entire class and Handout 32-4 to students playing committee members.

4. Have students read and prepare their roles. Committee members should meet to prepare questions. Attorneys should meet with their respective witnesses. Students who will give personal testimonies should meet to discuss the content of the testimonies. Make sure these students understand that they are not witnesses, but that they will take part in the conclusion of the activity.

5. Make (or have students make) signs for the committee chairperson, committee members, each witness, and each personality giving testimony.

6. Set up the room for the hearing. Committee members should sit at a table facing the audience. Place two chairs facing the committee, one for the witness and one for the attorney.

7. Conduct the hearing, following the procedure on Handout 32-2. After the chairperson adjourns the hearing, ask him or her to turn over the floor to the students giving personal testimonies. The students giving personal testimonies should follow the order given on Handout 32-2.

8. Debrief the activity using the following questions:

--What conditions led to the hearings of HUAC and the McCarthy Senate committee?

--How should internal security be balanced with individual rights? At what point is the right to belong to political organizations harmful to national security?

--What constitutional rights were recognized at the hearings? What rights were not?

--John Howard Lawson was a Communist. Do you agree with his view that the committee had no business investigating his beliefs and associations because they were guaranteed under the First Amendment?

--Do you agree or disagree with Ronald Reagan's point of view? Do you think he would hold these views today?

--The House Un-American Activities Committee was abolished in 1975. Recently, however, some political leaders have proposed that it be re-established. Do you agree or disagree with this proposal?

--In 1950, there were probably fewer than 90,000 Communists in the country. During the 1920s, there were as many as four to six million members of the Ku Klux Klan. Why do you think there was more fear of Communists in the 1950s than of the KKK in the 1920s?

--Did the guarantees against self-incrimination work? Why or why not?

9. The day after the debriefing, the two reporters should read their articles to the class. Ask students to compare the reporters' perspectives and speculate on the impact of the articles on readers.

THE McCARTHY ERA OF THE 1950S: BACKGROUND

The Communist Scare

After World War II, America was swept by a Communist scare, spurred by new developments abroad. Eastern European countries came under the influence of the Soviet Union. In 1949 it was learned that the Soviet Union had tested and was making atomic bombs. In that same year, the Chinese Revolution, led by Mao Tse-tung, succeeded, and the nationalists were forced off the mainland to Taiwan. A year later, the United States was at war with Communist North Korea. Thus began the period of the "Cold War" between the United States and the Soviet Union.

Suspicion and distrust were also directed at people within the country. Several incidents convinced many Americans that a Communist threat existed within our own government. Whittaker Chambers, a former editor of Time magazine, accused a former member of the State Department, Alger Hiss, of being a Communist spy. He said that Hiss had passed secret documents to the Russians.

Then Dr. Klaus Fuchs confessed in England that he had passed secrets to Russia while working in Los Alamos, New Mexico, on the atomic bomb. After a controversial trial, Julius and Ethel Rosenberg were executed for delivering atomic secrets to the Soviet Union. The general climate of concern and distrust was heightened.

President Truman feared that the Republicans would make a 1948 campaign attack against the Democrats using the "Communists-in-the-government" issue. In response, he began his own loyalty program. He ordered the dismissal of federal employees who were members of or sympathetic to any "...organization of persons, designated by the attorney general as...subversive," or in anyway a threat to the government. Although the records of more than 3 1/4 million federal employees were screened, only 314 were discharged as being possible security risks. Not one case of spying was ever discovered.

The House Un-American Activities Committee (HUAC)

During the 1920s and 1930s, there were similar waves of fear against external and internal threats of Communism.

In 1938 the House Un-American Activities Committee was established by the House of Representatives to investigate "un-American propaganda activities in the United States." HUAC revived its investigations after World War II. It held hearings from 1945-1955 to uncover Communist activity in all walks of life--the press, labor unions, the movie industry, the arts, government. Witnesses called before the committee were asked to respond to the question that marked the era: Are you now or have you ever been a member of the Communist party?

In 1947 HUAC began hearings to investigate the Hollywood movie industry. Well-known movie stars were called as witnesses. Ten witnesses refused to answer any questions dealing with their political activities. Called the "Hollywood Ten," they insisted that their First

Amendment right of freedom of speech gave them a constitutional basis for refusing to answer the congressmen's questions. They were nevertheless charged with contempt of Congress, put on trial, and sent to prison.

Other witnesses used the Fifth Amendment (right to remain silent) when questioned by the committee. The courts upheld a person's right to remain silent in a congressional committee hearing, so these people were not sent to prison. However, they were labeled "Fifth Amendment Communists," even though no proof was presented of their disloyalty to America. Many witnesses who chose to remain silent were "blacklisted" by the entertainment industry, thus losing their jobs and careers.

The hearings were not trials. Under the Constitution, Congress cannot charge or try people with crimes. The purpose of the hearings was to collect information for legislative purposes. Yet the hearings had the effect of tribunals because of their effects on witnesses' lives. There were fewer procedural safeguards, however. Witnesses could be represented by counsel, but there was no cross-examination, no impartial judge or jury, and no exclusionary rule concerning hearsay or other evidence.

The Rise of Joe McCarthy

Into this atmosphere of fear and suspicion came Joseph McCarthy, a little-known senator from Wisconsin, who became a prominent and controversial figure during this period. Facing reelection in 1952, McCarthy was looking for an issue which would appeal to voters. That issue was to be communism. In an electrifying speech before a political gathering in 1950, McCarthy made the following statements (according to the press):

> While I cannot take the time to name all the men in the Communist Party and members of a spy ring, I have here in my hand a list of 205 that were known to the secretary of state as being members of the Communist party and who, nevertheless, are still working and shaping policy in the State Department.

These statements shocked the nation. In response, the Senate set up a special committee to investigate charges of Communist presence in the government. Although many persons were called before the committee, it failed to find any Communists within the government. Millar Tydings, the committee chair, issued a report denouncing McCarthy's charges as a "fraud and a hoax." The report concluded that "we have seen an effort not merely to establish guilt by association, but guilt by accusation alone."

McCarthy proceeded to work successfully for Tyding's defeat in the 1950 election. He himself was reelected in the 1952 Republican victory that carried Dwight D. Eisenhower into the White House. McCarthy became chairperson of the Senate Permanent Investigations Subcommittee, to be known as the "McCarthy Committee." With his own investigative team consisting of ex-FBI agents and private detectives, he began to expand his charges to anybody and everybody considered controversial. Under attack were General George C. Marshall, personnel of the Voice of America, and the U.S. Army. But the army proved to be McCarthy's undoing.

While McCarthy was investigating communism in the army, it came to light that an ex-McCarthy staffer who had been drafted was being granted special favors while in the army. Accusations and counter-accusations between McCarthy and the army followed. McCarthy's own committee was put in charge of the investigation, and McCarthy stepped down to be a witness in what is known as the Army-McCarthy hearings. These hearings were televised live and viewed by an estimated 20 million people. While the hearings resulted in an impasse, McCarthy lost much of the respect and popular support he had commanded. The public was able to witness firsthand his reckless accusations, faked evidence, and rambling pointless speeches.

The Senate later voted to condemn McCarthy for "impair(ing) the Senate's integrity and dignity."

The Role of the Press

It is important to understand the role that the press played in reporting the events of this era. Members of Congress are immune from charges of slander while within the halls of Congress. The press could freely quote charges made during the hearings in startling headlines without fear of libel actions. The more sensational the witness, the greater the news value. Since millions of people seldom read more than headlines, the accusations became fixed in the public mind. Once accused, the witnesses became guilty. The press played a role in the excesses of the McCarthy era.

ROLES AND PROCEDURES FOR HUAC HEARING SIMULATION

Roles

Members of the House Un-American Activities Committee (6-8 persons)
Committee Chairperson
Witnesses (in order of appearance)
  Walt Disney, Producer
  Ronald Reagan, President, Screen Actors Guild
  Louis Russell, HUAC investigator
  John Howard Lawson, screenwriter
  Edward V. Condon, scientist
  Martin Berkeley, screenwriter
  Lillian Hellman, playwright, author
Attorneys
  Attorney for the House Un-American Activities Committee
  Attorney for John Howard Lawson
  Attorney for Edward Condon
  Attorney for Lillian Hellman
Personal Testimonies (in order of appearance)
  Charlie Chaplin, actor
  Humphrey Bogart, actor
  Katharine Hepburn, actress
  Simon W. Heimlich, university professor
  Ruth Brown, librarian
  John Paton Davis, Jr., China specialist
  Dr. Vannevar Bush, President, Carnegie Institution
  Dwight D. Eisenhower, U.S. President, 1953-1961
Members of the Press
  Reporter for a liberal newspaper
  Reporter for a conservative newspaper

Procedures for Hearing

1. Opening statement by the committee chairperson.

2. Questioning of witnesses. Witnesses will be called in the order listed above. They will answer questions from committee members.

3. Deliberations. The committee will deliberate on whether to (1) recommend legislative action or (2) draw up a resolution to the full House recommending that a particular witness be cited for contempt of Congress.

4. Decision. The committee will deliver its decision, and the hearing will be adjourned.

5. Conclusion. The committee chair will open the floor for personal testimonies. They should be read in the order listed above.

6. Newspaper Accounts. The reporters will read their articles to the class the day after the hearing is over.

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ROLE DESCRIPTIONS

This handout describes the roles of witnesses, attorneys, persons giving testimonies, and newspaper reporters. Information about these roles was taken from historical accounts in the five books listed below. The role description for each witness and person giving testimony tells which book provided information about that person. If you wish, you can refer to these books or other books about the period for more material to use in preparing your role.

Carr, Robert K., The House Committee on Un-American Activities, 1945-1950 (Ithaca, N.Y.: Cornell University Press, 1952).

Caute, Davis, The Great Fear: The Anti-Communist Purge Under Truman and Eisenhower (New York: Simon and Schuster, 1978).

Navasky, Victor S., Naming Names (New York: Penguin Books, 1980).

Bill of Rights in Action, Vol. XV, No. 3 (Los Angeles: Constitutional Rights Foundation, 1981).

Hellman, Lillian, Scoundrel Time (Boston: Atlantic-Little, Brown, 1976).

Witnesses

These witnesses actually testified before the House Un-American Activities Committee between 1947 and 1957. Their testimony represents a cross-section of the kinds of testimony presented to the committee. The "friendly" witnesses were those people who cooperated with the committee in their search for communism. The "unfriendly" witnesses were those subpoenaed because of questions regarding their loyalty.

Witnesses may refuse to answer questions from the committee on the following grounds:

1. The questions violate the witnesses' First Amendment rights of freedom of speech and assembly. Congress has no right to probe into witnesses' political beliefs and associations. Witnesses who refuse to answer on the basis of the First Amendment are not protected from contempt of Congress citations. The First Amendment does not protect them from self-incrimination. It merely challenges the right of Congress to investigate political affiliations as part of a legislative purpose.

2. Witnesses may invoke the Fifth Amendment right against self-incrimination. If they do this, they cannot answer any questions from the committee either about their activities or beliefs or those of others. The Fifth Amendment will protect witnesses against contempt of Congress citations, as ruled by the U.S. Supreme Court in a test case during the House and Senate investigations.

Walt Disney - A "friendly" witness, eager to confirm HUAC's suspicions about the Communist threat in Hollywood. He will testify that Communists had been responsible for all the labor troubles in his studio. The Studio Cartoonists Guild was dominated by Communists. He was afraid they would write stories for Mickey Mouse that were sympathetic to the Communist line. Strikes and boycotts were organized by Communist front groups, including the League of Women Voters. He firmly believes that the Communist party should be outlawed. (HUAC and investigators knew it was not the League of Women Voters, but the League of Women Shoppers. They did not correct him. He did not correct his error until the next day. By then the papers had picked up the testimony and damage had been done to this highly respected group.) (Carr, pp. 316-317, 357, 376; Caute, pp. 489, 493; Navasky, p. 80.)

Ronald Reagan - A "friendly" witness, testifying as the president of the Screen Actors Guild. He will testify as follows: "Fundamentally I would say in opposing those people that the best thing to do is to make democracy work. In the Screen Actors Guild we make it work by insuring everyone a vote and by keeping everyone informed. I believe that, as Thomas Jefferson put it, if all the American people knew all the facts, they will never make a mistake...Whether the party should be outlawed I agree...is a matter for the government to decide. As a citizen I would hesitate, or not like to see any political party outlawed on the basis of its political ideology. We have spent 170 years in this country on the basis that democracy is strong enough to stand up and fight against the inroad of any ideology. However, if it is proven that an organization is an agent...of a foreign power, or in any way not a legitimate political party, and I think the government is capable of proving that, if the proof is there, then that is another matter." (Carr, pp. 60, 375)

Louis Russell - A private investigator hired by HUAC to investigate the backgrounds of the people under subpoena. He will present evidence he has uncovered about Lawson. He will testify that Lawson had a Communist party "registration" card for the year 1944 made out in his name and bearing the number 47275. He will present the name of the Communist front organizations to which Lawson belongs: International Labor Defense, the American League Against War and Fascism, the American Peace Mobilization, and American Youth for Democracy. All are on the attorney general's list of subversive organizations. Lawson is a regular contributor to the New Masses and the Daily Worker, Communist publications. Lawson has "shown an active interest in the Soviet Union." (Caute, pp. 570-571)

John Howard Lawson - Founder and first president of the Screenwriters Guild. A well-known screenwriter. Head of the Hollywood branch of the Communist party. Previously named as a Communist before the committee by a screenwriter and a director. One of the "Hollywood Ten," he will refuse to answer any direct questions because he "denies the authority of the committee to ask." He will argue that his right to belong to any organization is guaranteed by the First Amendment. Therefore, it is none of the committee's business. When asked if he is a member of the Communist party, he will answer that it is none of the committee's rightful business. He will accuse them of trying to control the movie industry. Next it will be the press, then the broadcasting institutions. The committee is invading the privacy of all citizens, "which has been historically denied to any committee of this sort...it invades the rights and privileges and immunities of American citizens whether they be Protestant, Methodist, Jewish or Catholic, Republican or Democrat or anything else." He will accuse them of using Hitler's techniques to create a scare and to smear the motion picture industry. He will say that he has been writing things about the greatness of America for years and "I shall continue to fight for the Bill of Rights, which you are trying to destroy." (Navasky, p. 231; Caute, pp. 494-495, 509)

Martin Berkeley - A "friendly" witness. Screenwriter specializing in such animal pictures as "My Friend Flicka." He had been a member of the Communist party from 1936 to 1943. Named by Richard Collins, a screenwriter, Berkeley first denied to HUAC that he had been a member but reversed his position and became an informer. He ultimately named 161 people as Communist sympathizers. He will testify that he allowed his home to be used for the organizational meeting of the Hollywood Communist party in June 1937. He will testify that one of the persons present was Harry Carlisle, a British-born screenwriter who had lived in the United States for 30 years. He had been deported back to England. Carlisle had been conducting Marxist classes. Others at the meeting were Donald Ogden Steward; Dorothy Parker, a writer; and her husband, Allen Campbell. Also present were "my old friend Dashiell Hammett who is now in jail in New York for his activities, and that very excellent playwright Lillian Hellman." (Navasky, p. 75; Caute, pp. 517-518, 588)

Edward V. Condon - Scientist. Authority on quantum mechanics, microwave electronics, and radioactivity. Served on the National Defense Research Committee, Roosevelt's Committee on Uranium Research in 1941. Directed work on an atom-smasher and uranium fission. He served in 1943 as J. Robert Oppenheimer's deputy on the Manhattan Project in Los Alamos. He resigned after ten weeks because of the strict security. His passport was withdrawn in June 1945 upon the recommendation of General Groves, military head of the Los Alamos project. He has been director of the National Bureau of Standards and president of the American Physical Science Society and the American Association for the Advancement of Science.

He ran into trouble with HUAC when, as president of the American Physical Society, he issued an "Appeal to Reason," calling for closer scientific working relations with Russia. He invited a delegation of Russians to visit the Bureau of Standards. Therefore, his name was mentioned in the Washington Time Herald as being linked with some organizations with subversive names, such as the American-Soviet Science Society. He requested a hearing through the secretary of commerce to clear his name, which was unanimously done. But HUAC issued a report on March 1, 1948, describing Condon as "one of the weakest links in our atomic security," meaning he might give secrets to the Soviets.

He is appearing before the HUAC to answer questions about his friendship with left-wing physicists. Frank Oppenheimer, brother of J. Robert, was a self-confessed Communist who joined the party as a very young man and then got out when he understood what it was about. The Great Depression with its unemployment and hunger caused many young people to become disillusioned. They found answers in the growing Communist party of the United States. Condon will testify that "for those whose inquiring minds had led them to associate with communism in the 1930s and later to reject it, he has only respect." He will also testify that "if it is true I am the weakest link in our atomic security, that is very gratifying and the country can feel absolutely safe..." (Carr, pp. 131-153; Caute, pp. 462-463, 470-471)

Lillian Hellman - Famous playwright, screenwriter, author. She has been subpoenaed because of her close association with Dashiell Hammett, novelist. Having been questioned before McCarthy's committee, Hammett was found guilty of contempt for refusing to give names of contributors to the Civil Rights Congress, an organization for which he was an officer. He served six months in prison. Also, Martin Berkeley has named Hellman as having been in a meeting at his home. Berkeley is a reformed Communist. Hellman will testify that she doesn't remember Berkeley. He has to be reminded that she had even met him, at a brief lunch with 16 other people at the studio commissary.

When ordered to appear before HUAC, Hellman felt that she could not testify freely about her own associations if it meant naming names of old friends and associates. "Guilt by association" would result because of her association with Dashiell Hammett, now in prison. To plead the Fifth would mean ridicule as a "Fifth Amendment Communist," a label freely given to anyone using the constitutional right to remain silent. She, therefore, has written a letter to the committee asking that she be allowed to answer questions only about her activities. The committee refuses her request. Therefore, she will plead the Fifth to all questions that are likely to implicate herself or others. Her letter explains why. (Caute, p. 179, 512; Navasky, pp. 45-57, 354)

Attorneys

Attorney for the HUAC - HUAC's attorney will inform witnesses that if they do not wish to answer questions, they may be cited for contempt of Congress unless they plead the Fifth Amendment. The attorneys may ask questions of the witnesses and badger them in an attempt to get them to answer questions. The attorneys may also give advice to the committee members about questions and responses.

Attorney for John Howard Lawson - Lawson's attorney will help prepare his defense, deciding how questions will be answered, and will sit with him during his testimony and advise him on his answers. Lawson will not answer questions related to his political beliefs because he feels they violate his First Amendment rights.

Attorney for Edward Condon - Condon's attorney will help prepare his defense, deciding how questions will be answered and will sit with him during his testimony and advise him on his answers.

Attorney for Lillian Hellman - Hellman's attorney will work with her on her testimony and will sit with her during her testimony. If any questions force her to say any more than very commonplace things, the attorney will advise her to plead the Fifth. This means questions about her own or her friends' activities or memberships, etc. After questions have been asked by the committee, the attorney will stand and ask that

Hellman's letter written to the committee two weeks earlier be allowed to be read into the record. Permission will be granted, and the attorney will read the following letter:

> May 2, 1952
>
> House Committee on Un-American Activities
>
> Dear Sirs:
>
> As you know, I am under subpoena to appear before your committee on May 19, 1952. I am most willing to answer all questions about myself. I have nothing to hide from your committee and there is nothing in my life of which I am ashamed. I have been advised by counsel that under the Fifth Amendment, I have a constitutional privilege to decline to answer any questions about my political opinions, activities, and associations, on the ground of self-incrimination. I do not wish to claim this privilege. I am ready and willing to testify.
>
> But I am advised by counsel that if I answer the committee's questions about myself I must also answer questions about other people and that if I refuse to do so, I can be cited for contempt. My counsel tells me that if I answer questions about myself I have waived my rights under the Fifth Amendment and would be forced legally to answer questions about others. This is very difficult for a layman to understand. But there is one principle that I do understand; I am not willing, now, or in the future, to bring bad trouble to people who, in my past association with them, were completely innocent of any talk or any action that was disloyal or subversive. I do not like subversion or disloyalty in any form and if I had ever seen any, I would have considered it my duty to have reported it...But to hurt innocent people whom I knew many years ago in order to save myself is to me, inhuman and indecent and dishonorable. I cannot and will not cut my conscience to fit this year's fashion, even though I long ago came to the conclusion that I was not a political person and could have no comfortable place in any political party.
>
> S/Lillian Hellman

(Hellman, pp. 138-139)

Personal Testimonies

These are testimonies of people who lived through the McCarthy era. They describe how events of the period affected their lives. Some of their actual words are used in these prepared statements.

Charlie Chaplin - I believe my troubles began in San Francisco in 1942 when I delivered a speech. I supported the idea of opening a "second front" in Europe to help the Russians, who were taking the brunt of the fighting. I described the Russians as fighting for "our way of life" as well as their own. I also remained good friends with people thought to be sympathetic to communism such as Picasso, Thomas Mann, Bertold Brecht. I lived in the United States for 41 years but never became a citizen. I am still a British citizen. This was a target for my enemies. I left the United States for good. (He returned in 1972 to receive a special Academy Award.) (Caute, pp. 516-517)

Humphrey Bogart - I was a member of the Committee for the First Amendment, which was formed by people in Hollywood to give support for the writers, actors, and directors who were being accused of being sympathetic to the Communist party. We chartered a plane and flew to Washington, where we arranged two broadcasts on ABC network called "Hollywood Fights Back." I suffered for this. My picture appeared on the front page of a Communist paper in Italy. The Daily Worker carried my picture, and everybody started calling me a dangerous Communist. It's a crazy time. We're all running scared. If Roosevelt were still alive, we would never have had all of this. As it is, none of us have any guts. (Caute, p. 497)

Katharine Hepburn - I lent my name to petitions and advertisements to help the accused of Hollywood. My studio, MGM, received so many letters against me that the studio boss, Louis B. Mayer, told me that he could not use me in any more films until I had once again become publicly acceptable. I didn't get to work because I took a stand in the defense of my friends. This is a scary, horrible time. (Caute, p. 497)

Professor Simon W. Heimlich - I taught on the faculty of Rutgers University, where I had tenure. I was subpoenaed to appear before McCarthy's committee in September 1952. I had been a member of a discussion group in 1946 which was examining communism from a methodological, scientific point of view. I pled the Fifth Amendment. When the president of the university called me in to question my action, I explained that I certainly was not and never had been a Communist. I pled the Fifth because I am opposed to all public investigations of political opinions. He fired me, explaining that the university was obligated to clear up any doubts about party memberships. There was no doubt. I was fired because I pled the Fifth Amendment. Instead of it being a right that protects us, it now confirms guilt, a far cry from its original intent. (Caute, pp. 414-415)

Ruth Brown - I was a librarian in Bartlesville, Oklahoma, in the early 1950s. I have never been a Communist. My problem came from a citizens' committee which complained that I gave too much shelf space to publications such as The New Republic, The Nation, Soviet Russia Today, Consumers' Research, and Negro Digest. They said all of these were objectionable periodicals. I was also accused of taking part in a discussion on race relations. I was fired, and the Oklahoma Supreme Court upheld a decision against me when I filed suit. (Caute, p. 454)

John Paton Davis, Jr. - I am a specialist on China. I was born in China in 1908 of missionary parents. I lived there most of my life. I worked for several years in the Office of Chinese Affairs of the State Department. I was suspended as a security risk in June 1951, cleared, re-investigated, then cleared again, and finally fired in 1954. My career in the Foreign Service is destroyed. Our office knew that Chiang

Kai-shek was corrupt and did not have the support of the people. Mao Tse-tung not only had their support, but they were doing very well under him and they wanted friendly relations with the United States. We transmitted this information along with our opinions that perhaps we should open up relations with Mao. Washington became very upset with our analysis. That is when I was accused of infiltrating the CIA with Communists. (Caute, p. 310, 313, 315)

Dr. Vannevar Bush - I am president of the Carnegie Institution. I was the head of the Office of Scientific Research during World War II. I am speaking for the scientists. The New York Times has reported that in any single year between 20,000 and 50,000 scientists, technicians, and engineers were not working pending security clearances. Many were choosing to go into industry to avoid the probing into their personal lives. By the mid-50s, about 1,000 scientists had encountered difficulties with security. We have a system of security clearance...which seems almost calculated to destroy...reputations by innuendo and charges based on spite...worst of all, we have the evil practice of ruthless, ambitious men, who use our loyalty program for their own political purposes. Scientists have stated serious doubts about the effectiveness of this program. It has resulted in investigative procedures that have seriously impeded our progress toward scientific advancement. Perhaps the greatest impediment to the scientist is the political climate of the country. (Caute, pp. 461-462)

Dwight D. Eisenhower, President of the United States, 1953-1961 - Of one thing I am certain: the political climate that existed before the appearance of Joe McCarthy allowed such a man to succeed. I said the following in an address at Columbia University:

> Amid...alarms and uncertainties, doubters begin to lose faith in themselves, in their country, in their convictions....If we allow ourselves to be persuaded that every individual, or party, that takes issue with our own convictions is necessarily wicked or treasonous, then we are approaching the end of freedom's road....As we preach freedom to others, so we should practice it among ourselves.

Reporters

Newspaper Reporter for Conservative Paper - This reporter will write an account of the hearing reflecting the viewpoint of the HUAC and the "friendly" witnesses.

Newspaper Reporter for Liberal Paper - This reporter will write an account of the hearing reflecting the viewpoint of the uncooperative witnesses.

INSTRUCTIONS TO MEMBERS OF HOUSE UN-AMERICAN ACTIVITIES COMMITTEE

The committee should select a chairperson to conduct the hearing. In addition to questioning witnesses, the chairperson will present the opening statement, the call for deliberation, and the decision. He or she will also open the floor for personal testimonies. All committee members are responsible for carefully reading the role descriptions of the witnesses to be questioned and developing questions to ask each witness. Members should divide the questioning of witnesses as they see fit.

Conduct of the Committee

Witnesses may use the First and Fifth Amendments to protect themselves. Committee members may badger witnesses and their attorneys by doing the following: (1) insisting that counsel may advise the witness only as to constitutional rights and not as to what evidence he or she may give, (2) rebuking counsel when whispering in the client's ear, (3) congratulating witnesses for not coming with a lawyer, (4) insisting on an answer if a witness refuses to answer one of your questions, and (5) threatening the witness with a contempt of Congress citation.

Contempt of Congress Citation

Congress can cite persons for contempt for two reasons: (1) acts that obstruct fulfillment of legislative functions and (2) refusal to perform acts such as testifying or producing documents.

To cite a witness for contempt, the committee must take the following steps. After deliberating at the end of the hearing, draw up a resolution to be introduced to the full House. Read the contempt charges to the witness. Advise him or her that a simple majority vote is all that is necessary for the full House to adopt the resolution citing him or her for contempt. The matter is then referred to a U.S. attorney in the Justice Department for presentation to a grand jury. The House usually supports the committee's contempt recommendation.

Opening Statement (delivered by the chairperson)

The House Committee on Un-American Activities is a fact-finding body. We are not a court. We subpoena persons to testify before us under oath, in order that we may get all the available, accurate information on subversive or un-American forces at work in this country. If the evidence indicates that legislative action is needed to cope with the situation, we must report that fact to the House.

The chief function of the committee, however, has always been the exposure of un-American individuals and their un-American activities. The Congress's right to investigate and expose undemocratic forces is as established and untrammeled as our Constitution. Therefore, we have the power to recommend for grand jury investigation anyone whose activities are considered to be subversive. We also have the right to cite a witness for contempt of Congress if that action is so warranted.

Suggested Questions for Witnesses

WALT DISNEY (a cooperative, or "friendly" witness)

1. To what extent do you think Communists have infiltrated your industry?

2. Could you describe some of the things they have done?

3. How serious a threat to the movie industry do you consider Communists?

RONALD REAGAN (a cooperative, or "friendly" witness)

1. How badly do you think the Screen Actors Guild is threatened by communism?

2. What should be done about it?

3. Should the Communist party be outlawed?

LOUIS RUSSELL (HUAC investigator testifying against Lawson)

1. Do you have any proof that John Howard Lawson is a card-carrying member of the Communist party?

2. What organizations does he belong to?

JOHN HOWARD LAWSON (under suspicion, an "unfriendly" witness)

1. Have you been a member of the Screenwriters Guild?

2. Do you think there are many Communists in your organization?

3. Wouldn't it be easy to slip Communist propaganda into the dialogue of movies?

4. Are you or have you ever been a member of the Communist party? (When he refuses to answer, ask several times again.)

5. Have you ever written for the *Daily Worker*? For the *New Masses*?

EDWARD CONDON (under suspicion, an "unfriendly" witness)

1. Why did you leave the Manhattan Project in Los Alamos during the war after only ten weeks?

2. Wasn't it J. Robert Oppenheimer who asked you to go to Los Alamos?

3. Didn't J. Robert have a brother, Frank, who was a Communist?

4. Didn't you know that J. Robert was very friendly to Communists and sympathized with their causes?

5. Why do you think this committee issued a description of you as "one of the weakest links in our atomic security"?

MARTIN BERKELEY (a cooperative, "friendly" witness)

1. Isn't it true that there was a Communist meeting in your home in June of 1937?

2. Can you give the names of the people who attended that meeting?

LILLIAN HELLMAN (under suspicion, an "unfriendly" witness)

1. Are you acquainted with Dashiell Hammett? How well do you know him?

2. Did you know that Hammett was a Communist?

3. Have you traveled to Russia?

4. Do you have friends in Russia? Do you know any writers there?

5. Do you have many friends who are Communists?

6. Have you ever been to Martin Berkeley's house?

7. Were you at a meeting at Berkeley's house for the organization of the Communist party in Hollywood in June of 1937? (Hellman's attorney will ask that a letter written by her to the committee be read into the record. Allow the letter to be read.)

33. BROWN V. TOPEKA BOARD OF EDUCATION (1954)

Introduction:

The landmark equal protection case of *Brown v. Topeka Board of Education* overturned the "separate but equal" doctrine established in the Plessy case a half-century earlier. In this case study, students write their own decisions and compare them with Chief Justice Warren's decision. The activity can be used when studying the civil rights movement of the 1950s and 1960s. It can also be used when studying the Fourteenth Amendment and in conjunction with *Plessy v. Ferguson*.

Objectives:

1. To increase understanding of the equal protection clause of the Fourteenth Amendment as interpreted in the Brown decision.

2. To increase awareness of changing interpretations of constitutional rights during different periods in history.

3. To develop understanding of how political and social conditions influence judicial decisions.

4. To enhance writing and reasoning skills.

Level: Grade 8 and above

Time: One class period

Materials: Copies of Handouts 33-1 and 33-2 for all students

Procedure:

1. Distribute Handout 33-1. Have students read the case and discuss the questions.

2. Ask students to write their own decision on the case, including their reasoning. This may be done in class or as homework.

3. Distribute Handout 33-2. Read Warren's decision. Have students compare their reasoning with the court decision. Duplicate and distribute some of the students' decisions for comparative purposes (optional).

4. Put the following quote from Justice Holmes on the board, and ask students to discuss it in light of the Brown decision.

> Precedents should be overruled when they become inconsistent with present conditions.
>
> --Justice Holmes
> *The Common Law* (1881)

BROWN V. TOPEKA BOARD OF EDUCATION (1954)

The *Plessy v. Ferguson* decision of 1896 gave legal sanction to the "separate but equal" doctrine.

"Separate but equal" was always separate, but it was almost never equal. "Separate but equal" laws hit blacks in every part of their lives. They put blacks in the back of public buses. These laws made blacks sit in separate waiting rooms in train stations. They even made blacks use separate drinking fountains. Most important, these laws made segregated education the prevailing pattern.

In the 20th century, black men and women refused to be held down. Some moved from farms to cities. Others moved from the South to the North. Many blacks began to earn more money than before at jobs in factories. Some blacks became famous as writers, musicians, or athletes. Others became lawyers and doctors.

By the 1950s black Americans had made some gains, but they still suffered because of "Jim Crow" laws. They began to form groups to take their cause into the courts. The most important case for black Americans in the 20th century came in 1954. It was called *Brown v. Board of Education*. Let's investigate this key case.

* * * * * * * * * * *

On school mornings, Linda Brown would wake up early. She had to get up earlier than most of the kids in her neighborhood. She was black, and she lived in Topeka, Kansas. A Kansas law allowed segregated schools. This law allowed the men who ran Topeka's schools to have separate schools for black children and white children.

There was a grade school just five blocks from Linda's house, but that school was for white children only. Linda had to take a bus that would carry her 21 blocks to the school for black kids. So she had to get up early.

Linda's parents were angry about this situation. They took their case to a federal court in Topeka. They said that Linda's black school was not as good as the white school in their neighborhood. The black school's building was old. The classrooms were crowded, and there weren't enough teachers.

Mr. and Mrs. Brown said that Linda had been denied the "equal protection of the laws" promised by the Fourteenth Amendment.

But Mr. and Mrs. Brown claimed even more. They said that Linda's school could never be equal as long as it was separate. They argued that segregated schools were harmful to black children. Such schools,

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Case only from *Law in a New Land* (Boston: Houghton Mifflin Co., 1972). Used with permission.

they argued, seemed to say that blacks weren't good enough to go to school with whites. The only way to prevent this harm was to put an end to all segregated schools.

The federal court in Topeka ruled against the Browns. This court said that the black school and the white school were just about equal.

Linda's parents were sure that they were right. So they asked the U.S. Supreme Court to look into their case.

Questions for Discussion

1. What kinds of factors other than school facilities, teachers' qualifications, and courses of study might make segregated schools unequal? What was the Browns' argument?

2. All Americans, white and black included, pay taxes to support public schools and other facilities. Do you think it is a denial of equal protection to tell black people they cannot use facilities they help pay for?

3. During the period before the Brown case, school districts used "busing" to segregate black students from white students. Compare this with the use of busing to integrate schools.

Pretend you are the Supreme Court justice assigned to write the decision in this case. Write your decision and give your reasons.

DECISION: BROWN V. BOARD OF EDUCATION

The Supreme Court made a unanimous decision in favor of Brown. It said that separate education was by its very nature unequal and a violation of the equal protection clause of the Fourteenth Amendment. The court thus overruled the doctrine of "separate but equal."

The following is an excerpt from the opinion written by Chief Justice Earl Warren.

> Today, education is perhaps the most important function of state and local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.
>
> We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal education opportunities? We believe that it does...
>
> To separate...(children) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone...Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.
>
> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the law guaranteed by the Fourteenth Amendment.

34. THE PENTAGON PAPERS CASE (1971): FREEDOM OF THE PRESS

Introduction:

The conflict between individual liberties and national security during wartime is a legal issue that has continued to arise in U.S. history. The famous Pentagon Papers case focused international attention on this issue during the Vietnam War. This case study allows students to grapple with the issue and examine the doctrine of prior restraint. It also enhances understanding of the political climate in which the Vietnam conflict took place. This activity can be taught when studying the Vietnam War. It may also be used when studying the First Amendment and doctrine of prior restraint. It would be useful to refer to the John Peter Zenger (Activity 3) and Korematsu cases (Activity 32), allowing students to compare and contrast the issues.

Objectives:

1. To enhance understanding of the First Amendment guarantee of freedom of the press.

2. To develop understanding of the doctrine of prior restraint.

3. To explore the conflict between the public's right to know on the one hand, and the powers of the President and the national interest on the other.

4. To increase awareness of public response to the Vietnam War.

Level: Grade 11 and above

Time: One-half to one class period

Materials: Copies of Handouts 34-1 and 34-2 for all students

Procedure:

1. Open the activity by discussing the following questions:

--What is the national interest?

--What is more important, the national interest or the public's right to know and the right of the press to publish?

--Are there times when the national interest should supersede freedom of the press?

2. Pass out Handout 34-1. Read and discuss the important facts and issues, emphasizing the issue of prior restraint. Have students discuss attitudes of the public toward the Vietnam War during this time period. Ask the class to vote on what they think the court decision should be.

3. Pass out Handout 34-2. After students have read the decision and excerpts from the two opinions, conduct a discussion of the points of view in both opinions.

THE PENTAGON PAPERS CASE

Introduction

> Liberty of the press, historically considered and taken up by the Federal Constitution, has meant, principally although not exclusively, immunity from previous restraints or censorship.
>
> --Chief Justice Hughes
> Near v. Minnesota (1931)

There is a strong tradition of opposition to pre-publication censorship (called prior restraint) in American judicial history. It has been held that it is better to allow something to be published and let the writer be criminally prosecuted after publication if necessary, than to prevent publication to begin with.

But what about the publication of government information that is classified "top secret" or that has been illegally obtained?

This conflict arose during the height of the Vietnam War in 1971. The famous Pentagon Papers, official documents which gave a detailed history of the U.S. involvement in Vietnam, covering the administrations of four Presidents--Truman, Eisenhower, Kennedy, and Johnson--were leaked to the press. Here is the story.

New York Times v. United States
United States v. Washington Post Company

It had the elements of a mystery. The Pentagon had contracted with the Rand Corporation, a think tank, to do a thorough history of U.S. policy relating to Vietnam. Eventually, the research resulted in a 47-volume study entitled History of U.S. Decision-Making Process on Vietnam Policy. The materials were classified as top secret.

Daniel Ellsberg was one of the men assigned to this job. A hawk with reference to the Vietnam War, he apparently was so influenced by the documents that came to his attention that his views on the war changed radically and he became a dove. Determined to bring to the attention of the American people and to Congress what be believed to be half-truths, misrepresentations, and lies by presidents and government officials, Ellsberg took 18 of these volumes out of the files of the Rand Corporation, had them photocopied, and then returned them. These were all marked "TOP SECRET," but Ellsberg argued that this set belonged to three government officials, one of whom gave him permission to read them.

Later, when Ellsberg and Russo, the man who helped him, were tried for this act, the government maintained that they had stolen the

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From The Idea of Liberty, by Isidore Starr, West Publishing Company, 170 Old Country Road, Mineola, New York 11501. Used with permission.

documents. That case later resulted in a mistrial, and neither Russo nor Ellsberg was ever tried again; the issue of their guilt under the law remains undetermined.

In order to publicize what they regarded as crimes against the American people by government officials, Ellsberg and Russo turned the photocopied materials over to the New York Times. After studying the materials for three months, the Times decided to publish them and on June 13, 1971, the first of the articles appeared. The government tried to get an injunction against the Times to stop any further publication on the ground that exposing the top secret documents would injure the war effort, as well as strain relations among the United States and its allies. The New York Times replied that the First Amendment prohibits censorship of the press, especially prior to publication.

The U.S. District Court ruled for the Times, but the U.S. Court of Appeals reversed. At the same time, the Washington Post began the publication of installments of the Pentagon Papers, and when the government tried to get an injunction, both the U.S. District Court and the U.S. Court of Appeals sided with the newspaper.

The case was then appealed to the Supreme Court. Since prior restraint was the issue--censorship before publication--speed was of the essence. The longer the courts delayed, the longer the publication would be delayed. With unprecedented speed, the Supreme Court decided the case in four days. Arguments were heard on June 26, 1971; the ruling was handed down on June 30, 1971.

As can be expected, this was a tough case for the nine justices. On the other hand, there was the claim by the newspapers that freedom of the press is protected by the First Amendment. On the other hand, there was the position of the government that the President is Commander-in-Chief of the Army and Navy and the chief architect of American foreign policy. He and his assistants have the power to decide which documents should be classified as Top Secret. When this is done, no one can see or read these documents without permission. The newspapers had no right to see or publish these documents, declared the government, especially since Ellsberg did not have any right to their possession. By passing them on the the newspapers, he was committing a crime, so the argument went, and the newspapers had to share that guilt because they were not entitled to possession. Furthermore, argued the government, publication of the documents would result in grave and irreparable injury to the public interest.

How would you decide this conflict in values?
Can you think of a way out of this dilemma?

DECISION SHEET

If it is any consolation to you, the court had so much trouble with this case that the result was a 6 to 3 ruling. The decision of the majority was presented in a "per curiam" opinion--an unsigned opinion giving the decision. Having done this, each of the nine justices then went on to write his own opinion, giving his own reasons.

The "per curiam" (unsigned) opinion of the majority was brief:

> ...Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity...The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint." ...The District Court for the Southern District of New York in the New York Times case,...and the District Court for the District of Columbia Circuit,...in the Washington Post case held that the Government had not met that burden. We agree...

Here are excerpts from two separate opinions.

Mr. Justice Black wrote:

> ...I believe that every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment...In my view it is unfortunate that some of my Brethren are apparently willing to hold that the publication of news may sometimes be enjoined. Such a holding would make a shambles of the First Amendment.

Mr. Justice Stewart wrote:

> In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and international affairs may be in an enlightened citizenry--in an informed and critical public opinion which alone can here protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment.

35. THE WATERGATE CASE: NIXON V. SIRICA (1973)

Introduction:

The issues of separation of powers, checks and balances, and executive privilege came into national focus when the Watergate scandal shook the Nixon administration. This case study allows for detailed examination of the facts and issues involved in the legal battle between the executive and judicial branches over the Watergate tapes. This activity can be used when studying the Nixon administration. Past cases related to separation of powers (Activities 18, 19, 22, and 29) can be related to this case in discussion. This activity can be conducted either as a case study or a mock court of appeals simulation.

Objectives:

1. To develop understanding of the facts and issues involved in the Watergate tapes case.

2. To examine the issue of executive privilege and the extent to which it can be claimed under the principle of separation of powers.

3. To increase understanding of checks and balances.

4. To develop understanding that under the rule of law, laws apply equally to all citizens, including high government officials.

5. To enhance critical thinking skills.

Level: Grade 11 and above

Time: One class period

Materials: Copies of Handout 35-1 for all students

Procedure:

To use as a case study:

1. Distribute Handout 35-1. Have students discuss the facts and issues of the case. Discuss arguments of both sides. Ask students to make a decision on the case and take a vote.

2. Read the decision (provided at the end of this activity) and discuss it with students.

To use as a mock court of appeals simulation:

1. Distribute Handout 35-1. Discuss the facts and issues.

2. Divide the class into groups of seven students. The groups should select roles as following:

--Three U.S. Court of Appeals judges

--Two attorneys for petitioner, Nixon

--Two attorneys for respondent, Sirica

3. Have the attorneys prepare arguments for their sides while judges prepare questions to ask the attorneys. Tell the judges to allow the petitioner five minutes, the respondent five minutes, and then give the petitioner one minute for rebuttal.

4. Conduct simultaneous appellate simulations. Make sure groups are far enough apart to avoid interfering with one another. Allow time for judges to make their decisions.

5. Ask each group of judges to give their decision and reasoning.

6. Read the actual decision presented below and compare it to the students' decision. Allow time for discussion.

Decision: Nixon V. Sirica

The U.S. Court of Appeals ruled against Nixon. The court said that the Constitution did not give the President absolute power to withhold material subpoenaed by a grand jury. The President did not have total executive privilege. To allow this would hurt, not uphold, the separation of powers. It was for the court and not the President to determine the extent of executive privilege.

The claim of executive privilege to safeguard national security was outweighed by the need to get evidence for a criminal trial.

NIXON V. SIRICA (1973)

June 17, 1972 - presidential election year. Time: 1:52 a.m. Burglars in rubber gloves were rifling the files of the darkened Democratic National Headquarters in Washington's swank Watergate Office Building. A security guard making his rounds happened to notice telltale tapes on garage doors where the break-in had occurred. A police car was summoned. Within minutes, officers with guns drawn caught the burglars in the act. Seven men were arrested for trying to install electronic spying devices and steal political secrets from the Democrats. Two were identified as officials of the Republican party's committee to reelect President Richard Nixon; one, as a consultant to the White House itself. Thus emerged the top of an iceberg that would become known as the "Watergate scandal"--the most widespread ever exposed on a federal administration.

The investigation turned up reports not only of burglary, but also high-level influence peddling, disruption of the election process, and cover-up to obstruct justice. The scandal eventually would lead to the resignation of a score of top administration officials, including the President's campaign committee chairman, his finance committee chairman, and his two closest White House aides. It would reach into the Justice Department, the Federal Bureau of Investigation, the Central Intelligence Agency. It would result in the sentencing of more than a dozen persons for various crimes. It would even lead to the resignation of the President himself.

For two years after the Watergate break-in, however, the White House denied responsibility for the planning or the cover-up by either the President or any member of his staff. To establish credibility, the administration appointed as a special prosecutor Professor Archibald Cox of Harvard Law School, a former U.S. Solicitor General. He was promised complete independence to pursue the investigation before a grand jury and in the courts. In addition, the Senate Watergate Committee opened a series of nationally televised hearings probing illegal and unethical activity during the 1972 presidential campaign. Its chairman was Senator Sam Ervin, a Democrat of North Carolina and a recognized constitutional expert. During the investigations of 1973, the following key case arose.

* * * * * * * * * * *

Senate Watergate Committee staffers didn't realize they were nearing the pivotal moment in their investigation of the White House scandal. Behind closed doors in Room G-334 of the Senate Office Building, their questioning of Alexander P. Butterfield had dragged on all afternoon. It was 5 p.m. Butterfield--a former aide to President Nixon who was being interviewed as a possible witness in the public committee

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From Vital Issues of the Constitution (Boston: Houghton Mifflin Co., 1975). Used with permission.

hearings--had told them nothing particularly startling. Then one committee staff investigator, following a hunch, asked the key question: "Are conversations in the President's office recorded?"

"I was hoping you fellows wouldn't ask me about that," replied Butterfield. Time stood still. Then the blockbuster truth came tumbling out.

In 1970, said Butterfield, Nixon had ordered the Secret Service to install electronic bugs, or listening devices. Since then, all conversations had been secretly and automatically tape-recorded in the President's offices throughout the White House complex, the Lincoln Sitting Room, the Cabinet Room, and his study at Camp David. The taped conversations included ones dealing not only with the Watergate scandal, but also with other governmental issues, with national security, with foreign relations, and with references to individuals.

Both the Senate Watergate Committee and the Special Prosecutor hastened to ask President Nixon to turn over the tapes. There had been serious conflict in much of the Watergate testimony. These recordings might settle most of the disputes. As the "best evidence" of the actual conversations between the President and his aides accused of taking part in the Watergate break-in, the tapes could support or deny the testimony of many witnesses. They could also clarify the President's own role in the affair.

President Nixon refused to turn over the tapes. He claimed that communications between the President and his advisers were confidential because of "executive privilege" and should not be divulged even in a court of law. He complained that to publicly reveal many such private conversations could damage national security and foreign relations.

Next, Special Prosecutor Archibald Cox secured a subpoena, an order demanding the production of evidence in court. This subpoena called upon the President to give the grand jury nine tape recordings of specific meetings and telephone coversations that had taken place between the President and his advisers from June 20, 1972 to April 15, 1973. In a letter dated July 25, 1972 the President rejected the subpoena. He said to deliver the tapes would be "inconsistent with the public interest and with the constitutional position of the presidency."

Special Prosecutor Cox polled the grand jury in open court and learned that the members of the jury wanted the tapes he sought. He then persuaded U.S. District Judge John J. Sirica to order President Nixon or one of his assistants to show cause why the evidence in the subpoena should not be produced.

In their reply to Judge Sirica, attorneys for the President presented two major arguments:

1. The letter of July 25 constituted a valid and formal claim of executive privilege.

2. The U.S. District Court did not have jurisdiction, or authority, to order the President to comply with the subpoena after his claim of executive privilege.

The special prosecutor offered several arguments in support of the court's order:

1. President Nixon had previously promised not to claim executive privilege with respect to testimony by his present and former assistants.

2. Detailed testimony by the President's assistants before the Senate Watergate Committee had led Special Prosecutor Cox to believe that conspiracies existed among persons other than those already convicted of the Watergate break-in and wiretapping. Cox also said the Senate testimony led him to believe such persons conspired to conceal the identities of the parties involved.

3. Evidence concerning the existence and scope of the conspiracy was in the tapes.

4. Inconsistencies in the testimony of the President's assistants before the Senate Watergate Committee raised the possibility of perjury (false evidence under oath).

5. Tape recordings of the conversations requested were directly relevant to the grand jury's task. They would be critical in consideration of whether and whom to indict.

Judge Sirica rejected President Nixon's challenge to the court's jurisdiction. To carry out the subpoena, the judge ordered that the tapes requested by the special prosecutor be handed over to the court for examination "in camera" (in private in the judge's chambers). He did this so that he could determine which tapes, if any, should be kept secret by the President on grounds of privilege--and which should be turned over to the grand jury.

Neither the President nor the special prosecutor was satisfied with Judge Sirica's decision. The President's attorneys asked the U.S. Court of Appeals to command the District Court to set aside its August 29 order. They conceded that the President, like every other citizen, was under a legal duty to produce relevant, nonprivileged evidence to the grand jury when called upon to do so, but the lawyers argued that it was solely the President's responsibility to determine whether a particular piece of evidence was within the scope of his "executive privilege." This immunity and absolute privilege, said the President's attorneys, arose from the doctrine of "separation of powers" and by implication from the Constitution itself.

Special Prosecutor Cox, on the other hand, wanted the Court of Appeals to command full and immediate disclosure of all the subpoenaed tapes to the grand jury.

The main issue before the U.S. Court of Appeals was whether the President, in his sole discretion, could withhold from a grand jury evidence in his possession that was relevant to the grand jury's investigations.

Questions for Discussion

1. What conditions, if any, would make the claim of executive privilege constitutional? Does this case fall under those conditions?

2. Should Judge Sirica have jurisdiction to make the President turn over the tapes? Why?

3. Do you think the President is legally bound to obey a court order?

4. Do you agree with President Nixon's argument that court interference with executive privilege would hurt the idea of separation of powers?

5. Which do you think is more important, the President's right to keep private his communications with members of his staff, or a prosecutor's right to get evidence in a criminal trial?

6. Can you think of other cases in history that have seen one branch of government in serious conflict with another?

7. How would you decide this case?

36. BLACK MESA: SENATE COMMITTEE HEARING SIMULATION

Introduction:

Ever since the colonization of the New World, traditional Indian culture and land use have been on a collision course with white culture, laws, and know-how. When coal was discovered at Black Mesa, Arizona, home of Hopi and Navajo, power companies signed contracts with the tribes to strip-mine the land. Coal-fired power plants were built. The impact on the Indian culture, land, economy, and environment has been controversial ever since.

In the early 1970s, a lawsuit was filed against the Department of the Interior, charging that it had not lived up to its role as trustee to protect the tribes against the alleged abuses of the power companies. Another suit, filed by a group called the Black Mesa Defense, tried to change the original contract with the Peabody Coal Company to raise the price per ton of coal paid to the Indians.

These controversies led to Senate subcommittee hearings on whether a moratorium should be placed on the construction of more coal-fired power plans in the Southwest. Much of the information included in this activity, which is a simulation of a Senate "fact-finding" hearing, came from the actual Senate hearings. Through this simulation, students see a full spectrum of views and gain an appreciation of the complexity of the issues. This activity can be used when studying contemporary problems. References can be made to similar issues raised in the General Allotment Act and *Worcester v. Georgia* activities (Activities 19 and 23).

Objectives:

1. To stimulate students to weigh the benefits of energy exploration against its impact on Indian culture and land use and the environment.

2. To develop understanding of the function of a Senate fact-finding committee hearing.

3. To increase awareness of the decision-making process.

4. To explore many sides of a complex issue.

5. To enhance critical thinking, argumentation, and decision-making skills.

Level: Grade 11 and above

Time: One and one-half to two class periods

Materials: Copies of Handout 36-1 for all students; one copy of Handout 36-2 cut into individual roles; a sign for each role (students can make these during the preparation period)

Procedure:

1. Distribute Handout 36-1. Read and discuss, making reference to issues raised in the General Allotment Act and/or Worcester v. Georgia activities if used.

2. List all the roles on the board. Briefly discuss the roles and make role assignments. All students not assigned witness roles should be members of the Senate Committee. Hand out role cards.

3. Allow time for students to prepare testimony. Be sure the Senate committee chairperson understands his/her role. Instruct the chairperson to call witnesses in the following suggested order: Peabody Coal Company spokesperson, Black Mesa Pipeline Company spokesperson, utilities representative, BIA representative, U.S. Geological Survey representative, U.S. Park Service representative, Navajo traditionalists, Hopi traditionalists, Navajo progressives, Hopi progressives, Chairman of Navajo Tribal Council, Chairman of Hopi Tribal Council, hydrologist, air pollution expert, reclamation expert. NOTE: The attitudes expressed in the various roles in the simulation reflect views held in the early 1970s but do not necessarily reflect attitudes of contemporary counterparts.

4. Set up the room with the committee facing the audience. Place a chair next to the committee for the witness.

5. Conduct the hearing.

6. Allow time for the committee to deliberate. Have the committee announce its decision and explain its reasoning. Make sure all the issues listed in the committee role description have been discussed.

Facts for this activity were taken from the following sources:

Gordon, Suzanne, Black Mesa: The Angel of Death (New York: John Day Co., 1973).

Joseph, Alvin, Jr., "The Murder of the Southwest," Audubon, Vol. 73, No. 4 (July 1971).

BACKGROUND: BLACK MESA

Black Mesa, located in northern Arizona, is barren land with little water, covered with brush and juniper and pinon trees. It is in "big sky" country with breath-taking vistas. To the Navajo and Hopi Indians, this 3,300-square-mile plateau is home, a sacred center, a burial ground. The Navajo call it the Female Mountain. Nearby is Lukachukai, the Male Mountain. Together they are symbols of the balance of nature which is the Navajo's duty to preserve.

To the Hopi, Black Mesa is very sacred land. The Hopi are an old people, having lived on their sacred mesas for more than 700 years. They came into this land when the Great Spirit allowed them entrance, instructing them to keep the land in trust until he returned to claim it. Thus, the Four Corners region--a region famous as the intersection of the borders of Utah, Colorado, Arizona, and New Mexico--is the Hopi center of the universe. They are charged with its care by the Great Spirit. The Hopi prophecy, so correct in many of its predictions, unsettles many observers who see the beginning of the destruction of this region. For it is said that in the third war in which the fate of mankind is finally settled, only Four Corners will be a sanctuary. It is to this place that all good people will come when the day arrives for the great purification. If this land is also destroyed, then there is no hope for humankind. All life will vanish.

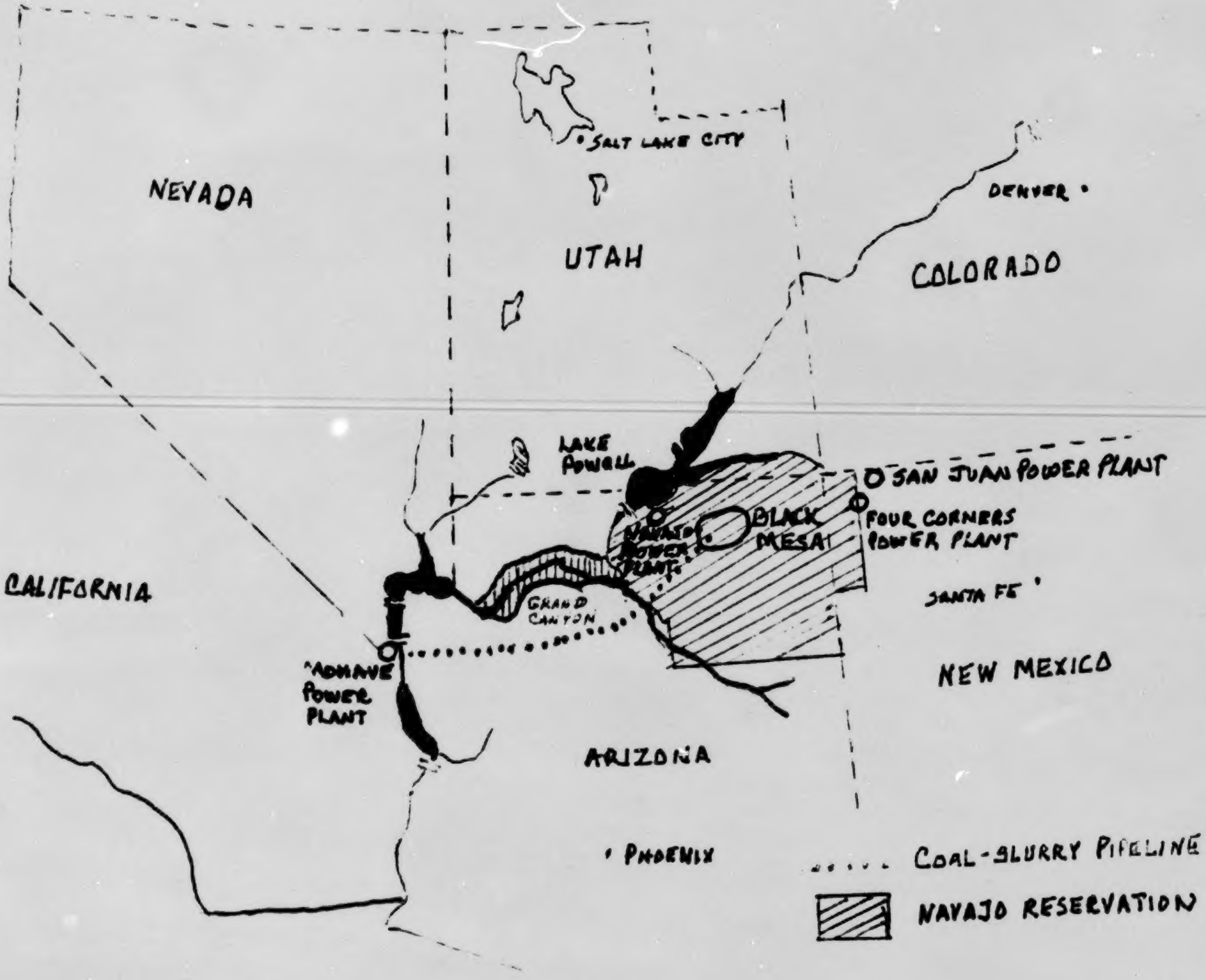
To many environmentalists, the prophecy is more than coincidental. With scientific understanding of what is going out of balance in nature's delicate web of life, dire predictions plague them as well.

Not everyone on the Hopi and Navajo reservations feels this way. Many "progressives" feel that day-to-day poverty is a more immediate concern. Sixty to seventy percent unemployment rates must be dealt with. A sense of hopelessness, which often ends in alcoholism, can be fought with meaningful employment, money to buy the necessities, schools and opportunities for the young, and a secure knowledge that there is a tomorrow to look forward to.

These opposing positions collided when coal was found on Black Mesa (as well as in other areas), and an opportunity for economic growth was presented. Power plants were planned and built in the Southwest. One plant's technology was so primitive that it would not be allowed in states such as California because of the air pollution. In the late 1960s, the Four Corners Power Plant was considered to be one of the worst polluters in the United States. Then other coal-fired power plants were built, one on Lake Powell near Page. The Navajo Power Plant uses coal from Black Mesa. The Mohave Power plant, located some 276 miles away, also uses Black Mesa coal. The coal is slurried through an underground pipeline after being ground up face-powder fine, mixed with water, and pumped through. Each of the power plants pollutes the air in the area encompassing many of the monuments, parks, and recreation areas found in the Southwest.

Overriding all of these concerns has been the growing need for more and more electricity. It is needed for the lights of the Las Vegas strip as well as for all the TV's, radios, dishwashers, compacters, stereos, washers, dryers, and air conditioners of Los Angeles--for that is where the energy from Black Mesa is going. For the Southwest it means more coal, more water, more air pollution. It also means more jobs, more security, better schools, a hopeful future for many Indians. Up until the late 1970s, the demand for electricity was doubling every ten years. That demand is now going down. Even so, the West still gets the energy, and the Southwest the pollution.

For the Indians the impact of the coal industry has been both positive and negative. A host of economic, legal, and cultural issues need to be examined. The historic conflict of Indian culture and land use with white culture, laws, and know-how continues in the struggle over Black Mesa.



ROLES

SENATE FACT-FINDING COMMITTEE (7 or more roles)

You should select a person to act as chairperson. He/she will be responsible for calling and dismissing witnesses and asking for questions from the other senators.

The purpose of this hearing is to determine if further investigation is necessary in the strip-mining of Black Mesa. You will hear testimony representing a variety of viewpoints. You will ask questions of each witness after his/her testimony.

In making your decision, you will address the following issues:

1. Is strip-mining helping or hindering the Navajos and Hopis?

2. Are the coal companies living up to the agreements in the contracts?

3. Will the water depletion (usage) cause serious future problems in the area? Should the government take some action to prevent this?

4. Are there sufficient air pollution controls on the power plants, or should the government take some action?

5. Is the water pollution serious enough to require government action?

6. Was there sufficient support from the Navajo and Hopi people to make the contracts in the first place?

7. Is the presence of coal companies destroying traditional cultures and ways of life?

8. Did the Bureau of Indian Affairs give adequate advice to the Indians before they signed the contracts? Are the government agencies adequately protecting the interests of the Indians?

Your answers to these questions should help you determine whether further investigation is needed.

You should take notes on the testimony of each witness, listening carefully for information that conflicts with testimony from another source. Ask questions to clarify issues.

As a committee, you will decide that either (1) further investigation is necessary, or (2) what is being done at Black Mesa is generally good for the Indians, the power companies, and the nation. Further investigation could lead to legislation to correct the situation if you determine that changes are needed.

HOPI TRADITIONALISTS (1-2 roles)

You believe that your people are the "keepers of the earth." Your Hopi prophecy warns about the destruction of the Four Corners region, where the white man has drawn the corners of four states. This is the center of the earth, you believe. Your prophecy says that when the sacred center is destroyed, that will be the end of the earth.

The strip-mining is destroying the earth and is taking your precious water. You see evidence that your springs, wells, and groundwater supplies are drying up and will not be adequate for your farming of corn and beans. They are the basis for your Hopi way of life. These crops are the center of religious ceremonies celebrated for a thousand years.

You are worried that the air pollution is destroying your skies. Runoff from spoil banks at the mine (ridges of overburden left from stripping) run into the washes that end up in your fields. If the runoff carries dangerous sulfur concentrates from the mine, your fields will be ruined.

You never agreed to the lease with Peabody. The BIA forced the Hopi to hold elections for a tribal council. They did this in order to establish a government that would sign contracts with the coal companies. Only 651 Hopis out of 4,000 took part in the elections. You don't believe in this form of government because it goes against your traditional ways of government and law. Nevertheless, the BIA recognized the vote as valid and had the tribal council sign the contract with Peabody; it represented the will of less than one-third of the Hopi people. It has yet to be read or explained fully to Hopi traditionalists.

CHAIRMAN OF THE NAVAJO TRIBAL COUNCIL

Your position (and these are the words of the actual chairman) is the following: "Strip-mining doesn't really bother me because, first of all, any resource that is on the reservation under the ground is for the Navajo to utilize." What bothers you is that the tribe does not own the power plants. If the tribe owned the plants, it would help build a permanent economic base on the reservation. The tribe would then sell the power and receive all the economic benefits rather than the one-tenth that the Navajos now receive from the sale of energy or power. What also bothers you is that Peabody only pays the tribe 25¢ per ton of coal. The cost of coal has gone up a lot since the contract was signed. The tribe got very bad advice from the BIA before signing the contract, which made no provision for inflation. The tribe is now locked into a very low rate for its coal.

U.S. GEOLOGICAL SURVEY, WATER RESOURCES DIVISION REPRESENTATIVE

Your preliminary calculations of the long-term effects of the Peabody Coal Company's depletion of groundwater supplies in the Black Mesa area are discouraging. You expect the water table to be lowered about 100 feet at Kayenta (northwest of the mesa) over a 30-year period, with lesser water level declines occurring at several other areas close to Black Mesa.

U.S. PARK SERVICE REPRESENTATIVE

You are a Park Ranger at Navajo National Monument just across the highway from Black Mesa. The streams that used to run seasonally are no longer running. They were fed from underground sources. Air quality has declined since the Navajo and Four Corners Power Plants have been operating. In the Southwest, the "Enchanted Wilderness of the Colorado Plateau," there are six national parks, 28 national monuments, two national recreation areas, scores of national historic landmarks and state parks, and 39 Indian reservations that can be adversely affected by air and water pollution from the stripping and burning of coal.

NAVAJO TRADITIONALISTS (1-2 roles)

Traditionalists want to preserve the old ways. You believe that Black Mesa is sacred land. The earth is your Mother and the sky is your Father. It is sacred land with many "ancient ones" buried here. It bothers you to see the earth ripped up by the strip-mining and the air pollution caused by the burning of coal.

Seventy-five families have had to be relocated far from their Black Mesa homes as the strip-mining has crossed the mesa. You are intruding on other Navajos' allotted lands. They build white houses for you instead of your warm hogans. On the mesa they have cut many new roads and have bulldozed away many of the junipers and pinon forests. Company coal trucks rumbling by at all hours destroy the quietness and privacy you used to enjoy.

You have heard that Peabody has dug very deep wells. They are draining off the underground water that used to feed the springs. Now you are worried about your drinking water and water for your sheep. Springs are drying up. They have fenced off your grazing lands. You have no access to them even after they have reclaimed the land. They tell you to keep your sheep off until they tell you otherwise.

They have changed the way the mesa looks. They have changed your way of life. You feel your way of life is threatened.

AIR POLLUTION EXPERT

The Black Mesa coal is low in sulphur, but it still burns very dirty. This would not be a problem if the power plants used the latest in air pollution technology. If they are as reluctant as the Four Corners plant to install adequate scrubbers and electrostatic precipitators (they remove sulphur and particles of fly ash from the gases that escape into the atmosphere), there will be trouble. It has taken 11 years of hearings and lawsuits to force clean-up of Four Corners. Air pollution from coal-fired power plants causes health problems--respiratory diseases and injury to plants and animals. The contracts with the Indians have all stipulated the use of the latest technology. Since the Departments of Interior and Health and Welfare are charged with protection of the Indians, the government should make the energy companies stick to the promises of their contracts.

RECLAMATION EXPERT

One cannot expect the same results from reclamation here as in the East. With less than 12 inches of rainfall a year, very different methods have to be used. The topsoil and overburden (strata above coal) must first be removed and saved. After the coal is mined, the overburden and topsoil must be carefully put back. Peabody did not do this until forced to by the National Strip Mine Law passed in 1977. Unfortunately, this law doesn't cover what was "reclaimed" before 1977.

PEABODY COAL COMPANY SPOKESPERSON

In 1964 your company signed 66 leases covering 35,000 acres of the mesa, with another 40,000 acres in the area jointly claimed by the Hopi and Navajo Reservations. This land is known to contain 337 million tons of coal lying in seams up to 8 feet thick near the surface. You pay the Indians 25¢ per ton of coal. With royalties as well, you will pay the Navajo tribe $14.5 million during the course of the leases. An additional $58.5 million will be given to individual leasees. You will reclaim the land. You will have to fence the land to keep Navajo sheep off the fragile new plants.

BUREAU OF INDIAN AFFAIRS REPRESENTATIVE

You negotiated the contracts for the Indians, firmly believing that it was in the best interest of the tribes. They have the coal and no technical expertise. The industries have the technology but no coal. A perfect fit.

HOPI PROGRESSIVES (1-2 roles)

The "traditionalists" argue that the contract with Peabody was approved by less than one-third of the voters. It is their fault if they chose not to participate in the election. The contract won a majority of the votes cast.

Your people cannot depend on farming as the only economic means of survival. You have a small population, only 5,000. Your reservation lies within the much larger Navajo reservation, which has 130,000 people and is still growing. They are pressing in on you, simply taking your land when they need it. Your people have had little help from the federal government in stopping this. You believe you must stop it yourselves by growing as a people, but you can only grow if you can feed a growing population. Jobs will bring in the money to encourage people to have larger families. Farming cannot do that. It is marginal now because of scarce water.

Mining on Black Mesa has scarred the land, but Peabody must live up to the contract, which guarantees a return of the land "in as good condition as received, except for the ordinary wear, tear, and depletion incident to mining operation." They have agreed to reseed the "areas where strip-mining activities have been completed and to bear the full expense of such a reseeding program." You have to trust them because you need the jobs desperately.

HYDROLOGIST

You are an expert in the study of water. Peabody has sunk wells to a deep aquifier, some 2,000 feet below the surface. They have lined the wells with casing to avoid draining the higher reserves of water. You believe there has been and will continue to be seepage, cracking and shifting of strata, making it more than likely that the Indians' water will be depleted. In an area where water is very scarce, this could destroy their ability to exist. Threat of acid drainage into water supplies is very real. Also, seepage into the washes that feed into Indian fields can bring sulphur, salts, and weathered or disintegrated shale flooding into the fields, destroying the potential for farming.

BLACK MESA PIPELINE SPOKESPERSON

Your company buys the coal from Black Mesa Mine #2, grinds it up face-powder fine, mixes it with water and slurry, and pumps it 273.6 miles to Bullhead City. There it is separated from the water. Then it is burned in the Mojave Power Plant. You use from 2,000 to 4,500 gallons of water per minute, drawn from wells some 2,000 feet deep.

CHAIRMAN OF THE HOPI TRIBAL COUNCIL

You have nothing but praise for the power companies and the mines. They are providing employment for your people, who have heretofore had to rely on farming as a way of life. You claim that the traditionalists are troublemakers with no support in the tribe itself.

NAVAJO PROGRESSIVES (1-2 roles)

Progressives want to abandon the old ways to help raise the standard of living of Navajos. New ways mean progress through economic development. You support the 1957 lease with Utah Mining and Construction of coal lands that provide coal for the Four Corners plant; the 1960 lease of land for the Four Corners Power Plant; the 1964 lease to Peabody Coal Co. on Black Mesa; the 1966 joint lease with the Hopi to Peabody for more Black Mesa acreage. All of this translates into "new jobs, large tax benefits,...royalties."

Royalty payments average around 25¢ per ton, giving the tribe some $58.5 million over the life of the lease. In addition the Navajo tribe will receive $5 an acre-foot from some 110,000 acre-feet of water; this means another $550,000.

Peabody has guaranteed that 75 percent of the miners hired are Navajo, totaling 375 jobs. They pay prevailing wages, which average better than $15,000 a year. Until the energy industry moved into the area, the only jobs had been sheep grazing. The land has been overgrazed and can carry fewer sheep. The population of the tribe is growing rapidly. The standard of living on the reservation is far below the national standard. In 1970 the mean annual income was less than $700. More than one-fifth of the population was not able to get jobs. To get jobs for many meant leaving the reservation, homes, family, friends. Now, with the mine on Black Mesa, you have work.

UTILITIES REPRESENTATIVE

The utilities have to use the coal where it exists. The Navajo and Hopi have a great deal of coal on their land. You buy the coal from Peabody or from Utah Mining, who lease the land from the Indians. You burn the coal in power plants to generate electricity. The United States is an energy-greedy nation whose greatness depends on the ability to provide electricity. The Indians get rich from their coal, but they are also helping the rest of the nation. The Four Corners Power Plant located next to Farmington, New Mexico, generates more than 2 million megawatts of electricity, enough for some 2 million people. The Navajo Power Plant next to Page, Arizona, which gets its coal from Black Mesa Mine #1, generates 2,300 megawatts and the Mojave Power Plant close to Bullhead City, some 1,500 megawatts.

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37. THE ROAD TO CITIZENSHIP: A HISTORY OF VOTING RIGHTS

Introduction:

This activity involves students in playing the roles of a variety of Americans, who take their places on the "road to citizenship" over a period of almost 200 years. Up to the time of the Fourteenth Amendment, the Supreme Court considered the states the source of citizenship, thus allowing them the right to determine voter qualifications. It took Amendments XV, XIX, XXIII, XXIV, and XXVI to secure the right to vote for all persons 18 and older. This role play can be used effectively as a culminating activity near the end of a U.S. history course, serving as a review of constitutional amendments and the issue of state vs. federal power. It also poses probing questions about the rights and responsibilities of citizens.

Objectives:

1. To prompt recognition of the right to vote as a basic right of citizenship.

2. To develop understanding of which segments in society could and could not vote during different periods in history.

3. To increase understanding of the issue of state vs. federal power with respect to voting rights.

4. To reinforce understanding of Amendments XIV, XV, XIX, XXIII, XXIV, and XXVI.

Level: Advanced grade 8 and above

Time: One or more class periods

Materials: Copies of Handout 37-1 for all students; one copy of Handout 37-2 cut into individual roles; a sign for each role

Procedure:

1. On the chalkboard (or a piece of butcher paper taped to one wall), draw the "road to citizenship" as shown below:

Limited Right to Vote | 1792-1829 | 1830-1875 | 1876-1945 | 1945-present | Right to Vote

2. Distribute Handout 37-1. Read the background information, discussing the questions in the first paragraph, if desired.

3. Explain that students will take the roles of people who could or could not vote during various periods in history. Hand out role cards and signs, explaining that each role represents one or more periods of history. (If there are more than 24 students, have pairs of students

share roles which have more than one time period.) The roles are marked Period 1, 2, 3, and/or 4. When their time period is called, students will stand up and read their role cards in the numbered sequence indicated on the cards. If their roles indicate that they have the right to vote, they should take a place on the "road to citizenship."

4. Read the background for Period 1, 1792-1829, provided below. Then ask, "Who is a citizen? Who has the right to vote?" Ask those persons with roles in that period to stand and read their roles in numerical order (1-8). They will either take their place in the "road to citizenship" or sit down.

5. Read background for Period 2, 1830-1875. Follow the same procedures as above for roles 9-20.

6. Read background for Period 3, 1876-1945 and use the same procedure for roles 21-30. Some of the students will have to leave the "road" and go back to their seats because of disenfranchisement.

7. Read the background for Period 4, 1945-present and use the same procedure for roles 31-38.

8. Pose the following questions for discussion during debriefing:

--Why did property requirements for voting exist?

--Why would the frontier regions be the first to drop the requirement?

--What influence did that have on the other states?

--Why were the states and not the federal government allowed to set voter qualifications?

--The Fourteenth Amendment promised much and gave little in way of protection to voters' rights. Why do you think the Supreme Court was still reluctant to deal with voter qualification even in national elections?

--Why were the five amendments necessary to broaden suffrage?

--How would you describe the history of the "road to citizenship"?

--Why are voting rights considered to be the most basic right of citizenship?

Background Material for the Time Periods:

PERIOD 1 1792-1829	The nation was just beginning under the Constitution. Many of our colonial experiences would follow us into independence. One was the English property requirement for the privilege to vote. Citizenship was generally thought of as being a result of being born in a country, but it did not carry with it the right to vote.

PERIOD 2 1830-1875	With frontier states granting universal manhood suffrage, the older states followed suit. Andrew Jackson's presidency helped to speed the dropping of the property qualification. The Fourteenth Amendment ratified in 1868 was meant to grant citizenship as well as voting rights to blacks. Many blacks voted during this early Reconstruction period.
PERIOD 3 1876-1945	Despite the Fourteenth and Fifteenth Amendments, blacks were denied their voting rights. After Reconstruction, the Supreme Court allowed the states to continue to set voter qualifications. States were creative in designing ways to keep blacks from the polls. Women were finally granted suffrage through the Nineteenth Amendment. By an act of Congress, so were the Indians.
PERIOD 4 1945-present	This period is sometimes known as the Second Reconstruction period. Harry Truman set the federal tone by desegregating the armed forces. A series of laws began to lay the groundwork for the 1965 Voting Rights Act and other civil rights acts.

THE ROAD TO CITIZENSHIP:
A HISTORY OF VOTING RIGHTS

Background

What does "citizenship" mean? What, if any, are the basic rights of a U.S. citizen? What, if any, are his or her duties?

Former Chief Justice Earl Warren defined citizenship as "man's basic right, for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person disgraced and degraded in the eyes of his countrymen."

Certainly the right to vote has become basic to the meaning of citizenship. It opens the door to "the right to have rights" because it grants the right to participate in the political process.

From 1792 to 1868, the Supreme Court insisted that the states should determine who should vote. It based this view on Article 1, Section 2, of the Constitution, which implied that if a person was eligible to vote in a state, then he was eligible to vote on the national level. Thus, the states, not the federal government, were given the power to determine voter qualifications.

The states have used this power not only to determine who shall vote but who shall not vote. States have historically denied suffrage, and thus participation in the political process, to certain segments of the society. In the earliest years, suffrage was the exclusive right of free, white, adult males owning property. Property qualifications were the first limitations on voting rights to be dropped.

When the Fourteenth Amendment was ratified in 1868, the Supreme Court clearly had the right to determine matters concerning voting rights on the national level. The amendment states that any person born or naturalized in the United States is a citizen of the nation as well as the state in which he lived. The Constitution now made the federal government, as well as the states, the source of citizenship. States could no longer limit or deny the rights and privileges of national citizenship. The Supreme Court chose, however, to leave voter qualifications in the hands of the states, unless there was a clear violation of the Fourteenth Amendment. The states proceeded to successfully limit black suffrage by using literacy tests, poll taxes, and white primaries. The franchise was safely kept in the hands of white males.

Because the Supreme Court chose not to confront the states' limitations on the right to vote, the Fifteenth, Nineteenth, Twenty-third, Twenty-fourth, and Twenty-sixth Amendments were needed to secure that right for all persons 18 years of age and older. The Supreme Court, at last, had to begin to assume responsibility for federal authority over voting rights. This was particularly true after the Voting Rights Act of 1965 was passed. By 1972, all Americans 18 years of age and older legally had the right to vote.

The road to citizenship has been a long one, traveled by millions, many of whom have been denied their right to participate in the political process through the vote.

Amendments Extending Citizenship and the Right to Vote

Fourteenth Amendment (1868) - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. (Section 1)

Fifteenth Amendment (1870) - The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. (Section 1)

Nineteenth Amendment (1920) - The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any States on account of sex.

Twenty-third Amendment (1961) - The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State...for the purposes of the election of President and Vice-President. (Section 1)

Twenty-fourth Amendment (1964) - The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax. (Section 1)

Twenty-sixth Amendment (1971) - The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age. (Section 1)

ROLES

INDIAN

1. (Period 1) I am a native of this land. I fought with the English against the French, but I cannot be a citizen according to the white man's law. I cannot vote.

27. (Period 3) I am now a citizen of the United States and can vote in state and national elections. The Shyder Act was passed in 1924, giving citizenship to all Indians born in the United States living on a reservation.

FREE BLACK

2. (Period 1) I have served in the Revolutionary War and the War of 1812. I own property, but because I am black, I cannot vote.

11. (Period 2) In the Supreme Court decision handed down in the Dred Scott case in 1857, blacks are not citizens at all. We have no protection under the law, no rights, even though we are not slaves.

LABORER IN MASSACHUSETTS

3. (Period 1) The law in this state says that in order to vote, a man must own at least 50 acres of land. I own nothing. I am still considered a citizen, but what good does that do if I can't vote?

10. (Period 2) Property rights for voting have been dropped throughout the nation. Now I can vote.

WOMAN

4. (Period 1) I have pioneered side by side with my husband, but I cannot vote.

20. (Period 2) Women still don't have the right to vote. In 1872, Mrs. Virginia Minor tried to register to vote in Missouri. When the registrar refused to let her, she filed a lawsuit which went to the Supreme Court. She said that the Fourteenth Amendment guaranteed her citizenship and the right to vote and her state could not interfere with those rights. The Supreme Court did not agree. In 1875 the court decided that it was up to the states to grant or restrict the right to vote.

26. (Period 3) After decades of struggle, women have at last won the right to vote. The Nineteenth Amendment was ratified in 1920. It says, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex."

PLANTER FROM VIRGINIA

5. (Period 1) I own 1,000 acres, and I am one of the elite in my state. I, of course, have the right to vote.

NORTH CAROLINA FARMER

6. (Period 1) I can vote in elections for the lower house of the state legislature. To vote for representatives in the upper house, you must have 50 acres. I don't own that much, so I can't vote.

9. (Period 2) I can vote now because all states dropped property requirements after Andrew Jackson became President.

VERMONT LOGGER

7. (Period 1) Ever since we broke from New Hampshire and New York, all white men have been granted the right to vote. When we became a state in 1792, this practice was continued.

KENTUCKY FRONTIERSMAN

8. (Period 1) Why would we want a property requirement on the frontier? Why, there's land for the taking. Every adult white male has always had the vote.

BLACK MAN FROM SOUTHERN STATE

12. (Period 2) I now have the right to vote because of the Fourteenth and Fifteenth Amendments. (Read the Fourteenth and Fifteenth Amendments to the class.)

21. (Period 3) I tried to vote in 1876 as usual, but an election official refused my vote. A lawsuit followed. It went to the Supreme Court. I claimed that the Fifteenth Amendment had been violated. The Supreme Court ruled that the Fifteenth does not give the right to vote to anyone; it only protects me from discrimination when I try to vote. The court said that there was no evidence that my vote was not counted because I am black. If that wasn't evidence, I don't know what is! I have lost the vote.

BLACK MAN FROM LOUISIANA

13. (Period 2) I have the right to vote now because of the Fourteenth and Fifteenth Amendments.

22. (Period 3) I was with a group of black men who tried to vote, but the whites wouldn't let us. We took over the courthouse, and there was a shoot-out in which 60 black men were killed. We filed suit on the basis that our Fifteenth Amendment rights had been violated. Our case went to the Supreme Court in 1876. The court ruled against us. It said that the incident was not a clear case of discrimination. It said that it was not clear the people were killed to keep them from voting because they were black. I don't think the court's reasoning makes sense, but we have lost the right to vote in Louisiana.

BLACK MAN FROM OKLAHOMA

14. (Period 2) I have the right to vote now because of the Fourteenth and Fifteenth Amendments.

25. (Period 3) Oklahoma passed a law saying we had to either (1) pass a literacy test to vote or (2) have proof that our grandfathers voted in 1886. The whites could prove the second part, so they were exempt from the literacy test. Of course we blacks couldn't prove the second part, so we had to read some hard material from the Constitution to be able to vote. We all failed it. We filed suit. Eventually the Supreme Court struck down the second part of the law, the "grandfather clause," but upheld the literacy test. We lost the right to vote.

BLACK MAN FROM NORTH CAROLINA

15. (Period 2) I have the right to vote because of the Fourteenth and Fifteenth Amendments.

31. (Period 4) A North Carolina law required that all voters be able to read and write a section of the state constitution in English. I couldn't do it because they chose the hardest section. A suit was filed. The Supreme Court ruled in 1959 that they thought a literacy test was a good idea and that it didn't violate the Fifteenth Amendment. We lost the right to vote in North Carolina because our schools are poor; we don't learn to read very well.

BLACK MAN FROM TEXAS

16. (Period 2) I have the right to vote because of the Fourteenth and Fifteenth Amendments.

28. (Period 3) Voting in a Democratic primary in Texas means voting in the real election. No other party has a chance to win in the general election. Texas passed a law in 1927 forbidding blacks the right to vote in the Democratic primary. The Supreme Court struck it down. In 1935 the legislature passed another law limiting Democratic party membership to whites. The Supreme Court upheld it as constitutional, so we blacks are now disenfranchised. We don't have the right to vote.

BLACK MAN FROM GEORGIA

17. (Period 2) I have the right to vote because of the Fourteenth and Fifteenth Amendments.

30. (Period 3) The state began charging a tax to vote. It is called a poll tax. Money is scarce for blacks, so it has kept us from voting. The poll tax was challenged in the Supreme Court in 1937; it was upheld as constitutional. We have lost our right to vote.

BLACK MAN FROM VIRGINIA

18. (Period 2) I have the right to vote because of the Fourteenth and Fifteenth Amendments.

33. (Period 4) As of 1964, the poll tax has been abolished by the Twenty-fourth Amendment (read amendment). In a test case in Virginia, it was held that poll taxes were illegal not only in national elections but in state and local elections as well. I didn't lose the vote.

BLACK MAN FROM SOUTH CAROLINA

19. (Period 2) I have the right to vote because of the Fourteenth and Fifteenth Amendments.

34. (Period 4) In 1965 the Voting Rights Act was passed. It suspended all literacy tests. It provided for federal supervision of federal registration of voters in six states to make sure that no racial discrimination in voter registration was allowed. It is the most effective civil rights legislation ever enacted. Within four years, 1 million blacks had registered to vote. This act was upheld as constitutional by the Supreme Court in the 1966 case South Carolina v. Katzenbach.

CHINESE ALIEN LIVING IN UNITED STATES

23. (Period 4) I am Chinese and have been living here since 1876. My children were born here, but I cannot be a citizen because of the Chinese Exclusion Act, which denies me the right to ever become a U.S. citizen. I pay taxes, but I cannot vote.

CHINESE MALE BORN OF ALIEN PARENTS

24. (Period 3) My parents are alien and cannot become citizens because they are Chinese. I was born here. I am, therefore, a native-born citizen. We have been declared citizens by a Supreme Court decision in 1898. I have the right to vote.

PUERTO RICANS AND VIRGIN ISLANDERS

29. (Period 3) Puerto Rico was annexed by the United States after the Spanish-American War. Puerto Ricans were granted citizenship in 1917. The Virgin Islands were purchased from Denmark in 1917. The natives were made citizens in 1927. We can vote in national primaries for President, but we cannot vote in the general election.

RESIDENT OF WASHINGTON, D.C.

32. (Period 4) I have never been able to vote in national elections. As of 1961, the Twenty-third Amendment gives residents of the nation's capitol the right to vote in national elections for president and vice-president (read the Twenty-third Amendment).

18-YEAR-OLD

35. (Period 4) Because of the Twenty-sixth Amendment ratified in 1971, I now have the right to vote. Before this, 18-year-olds were eligible for the draft but were not allowed to vote.

CONVICTED FELON

36. (Period 4) I have lost my right to vote even after I get out of prison. I will have to pay taxes and social security, but I will not be able to vote.

ILLEGAL ALIEN

37. (Period 4) I too have to pay taxes and social security out of my small wages. I've never filled out an income tax form, so I haven't gotten anything back. When I go back to Mexico, the U.S. government will have made money off of me. Of course, I will never have a chance to vote and probably can never become a citizen of this country.

REFUGEES OF THE 1970S - CUBANS, VIETNAMESE, HAITIANS

38. (Period 4) I represent the Vietnamese boat people, the Cubans, and the Haitians, all of whom entered this country within the past ten years. All of us were given "parole asylum status," which means we can stay here until a decision can be made about us. We are not citizens and therefore have few rights. The Cubans will be granted "adjustment of status," which means that they can become immigrants in the legal sense and ultimately become naturalized citizens.

RELATED RESOURCES IN THE ERIC SYSTEM

The resources below are available through the ERIC (Educational Resources Information Center) system. Each resource is identified by a six-digit number and two letters: "EJ" for journal articles, "ED" for other documents. Abstracts of and descriptive information about all ERIC documents are published in two cumulative indexes: Resources in Education (RIE) for ED listings and the Current Index to Journals in Education (CIJE) for EJ listings. This information is also accessible through three major on-line computer searching systems: DIALOG, ORBIT, and BRS.

Most, but not all, ERIC documents are available for viewing in microfiche (MF) at libraries that subscribe to the ERIC collection. Microfiche copies of these documents can also be purchased from the ERIC Document Reproduction Service (EDRS), Box 190, Arlington, VA 22210. Paper copies of some documents can also be purchased from EDRS. Complete price information is provided in this bibliography. When ordering from EDRS, be sure to list the ED number, specify either MF or PC, and enclose a check or money order. Add postage to the MF or PC price at the rate of $1.55 for up to 75 microfiche or paper copy pages. Add $0.39 for each additional 75 microfiche or pages. One microfiche contains up to 96 document pages.

Journal articles are not available in microfiche. If your local library does not have the relevant issue of a journal, you may be able to obtain a reprint from University Microfilms International (UMI), 300 North Zeeb Road, Ann Arbor, MI 48106. All orders must be accompanied by payment in full, plus postage, and must include the following information: title of the periodical, title of article, name of author, date of issue, volume number, issue number, and page number. Contact UMI for current price information.

Arbetman, Lee and Ed O'Brien, "From Classroom to Courtroom: The Mock Trial," Update on Law-Related Education 2, no. 1 (Winter 1978), pp. 13-15, 47-48. EJ 202 315. Journal available from American Bar Association, 1155 East 60th Street, Chicago, IL 60637.

The authors examine how students in high school classrooms are learning about law and legal processes by participating in simulations of courtroom trials. They discuss rationales for mock trials, types of mock trials, how to prepare for mock trials, and useful materials.

"Are Indian Treaties Relevant Today?," American Indian Journal 5, no. 2 (February 1979), pp. 29-34. EJ 198 247. Journal available from Institute for the Development of Indian Law, 927 15th Street, N.W., Washington, DC 20005.

This article is a transcript of a radio interview conducted by Denise Freeland for "Kaleidoscope" at American University. The topic, "Understanding Indian Treaties," is addressed by Kirke Kickingbird and Alex Skibine of the Institute for the Development of Indian Law.

Campbell, A. Bruce and others, Teaching About Basic Legal Concepts in the Senior High School (Albany, NY: New York State Education Department, 1974). 41 pp. ED 095 050. EDRS price: MF-$0.97/ PC-$3.90.

This document provides a rationale for a series of modules to provide guidance and illustrative materials for developing legal concepts and understandings in an 11th-grade U.S. history course. Purpose of the program is to develop student respect for the rule of law. Suggestions for use of the modules are presented, along with tips on collecting resource materials for classroom use. The five modules--"The System: Who Needs It?," "Legal Techniques at Work," "Law and Change," "Keeping the Officials in Line," and "The Limits of Law"--are ERIC documents 095 045 through 095 049.

Certain Unalienable Rights: Materials for Using American Issues Forum in the American History Classroom (Albany, NY: New York State Education Department, 1976). 80 pp. ED 134 527. EDRS price: MF-$0.97/ PC-$7.40.

This booklet presents a set of secondary-level classroom strategies for examining U.S. history in light of issues identified by the American Issues Forum. Emphasis is on "certain unalienable rights" of citizens. This topic is covered in four sections--freedom of speech, assembly, and religion; freedom of the press; freedom of search and seizure; and equal protection under the law. Each section includes activities and bibliographies.

Eyster, Ira, ed., Law-Citizenship Education Curriculum Guide: A Scope and Sequence Approach for Kindergarten Through Grade Eight (Oklahoma City: Oklahoma State Department of Education and Oklahoma University, 1978). 202 pp. ED 175 456. EDRS price: MF-$0.97/PC-$16.15.

This guide presents learning activities and teaching methods relating to law and citizenship education for grades K-8. The guide treats five basic topics: liberty, justice, equality, property, and power. A number of the activities are suitable for use in U.S. history courses.

Hoover, Kenneth H. and Helen M. Hoover, "Exploring Social Issues," Social Studies 71, no. 2 (March-April 1980), pp. 77-79. EJ 222 569. Reprint available from UMI.

Discusses use and development of case studies for instruction in the decision-making process. The authors suggest that discussion of a case should focus on questions concerning clarification of issues, exploration of events, evaluation of issues, and implications and application of findings.

How to Plan and Conduct a Mock Trial (Jefferson City, MO: Missouri State Bar Association, 1981). 41 pp. ED 201 577. EDRS price: MF-$0.97/ PC-$3.90.

This document contains resources and suggested steps to help secondary teachers organize and conduct a mock trial. Although written specifically for use in Missouri, the document can easily be adapted by teachers in other states.

In Search of Justice (Chicago, IL: American Bar Association, 1978). 43 pp. ED 155 070. EDRS price: MF-$0.97/PC-$3.90.

This monograph briefly examines justice in the United States as it has evolved historically in four areas: (1) the right to vote, (2) the right to freedom of expression and freedom of the press, (3) the rights of persons accused of crimes, and (4) the right to equal protection under the law. Historical background information and constitutional case studies on each topic are presented.

Kelly, Cynthia A., "Teaching About Search and Seizure," Update on Law-Related Education 2, no. 2 (Spring 1978), pp. 8-12, 40-42. Journal available from American Bar Association, 1155 East 60th Street, Chicago, IL 60637.

The author presents a six-step model to help teachers develop curriculum related to the Fourth Amendment. The model focuses on determining values and attitudes, defining valid and unreasonable search and seizure, recognizing a valid warrant, and using film to teach about search and seizure.

Kinoshita, Jane, Citizenship Education: Instructional Materials/Resources for High School Citizenship (Honolulu: Hawaii State Department of Education, 1977). 60 pp. ED 196 793. EDRS price: MF-$0.97/PC-$5.65.

This resource guide contains six units of study for use at the secondary level. The purpose of the units is to help students examine the political and legal processes of American society and the rights, responsibilities, and roles of its citizens. The units, which focus on the law, can be used to supplement a U.S. history course. Each unit includes key questions, generalizations, concepts, objectives, learning activities, and materials.

London, John, "Small-Group Instruction: To Make It Work," Clearing House 54, no. 6 (February 1981), pp. 265-266. EJ 241 714. Reprint available from UMI.

This article presents some suggestions to secondary teachers on organizing small-group instruction projects and provides a sample set of conduct guidelines for students participating in group work.

Marsh, Colin J., "Simulation Games and the Social Studies Teacher," Theory Into Practice 20, no. 3 (Summer 1981), pp. 187-193. EJ 251 693. Reprint available from UMI.

Simulation games are discussed as innovative educational techniques for social studies teachers. Theories of simulation and selecting, creating, and implementing simulations are among the topics discussed.

McMahon, Edward T., "The Case Study: A Strategy for Gifted Students," Roeper Review 5, no. 1 (September 1982), pp. 22-24. EJ 274 487. Reprint available from UMI.

Using the case study method as the primary teaching strategy in law-related education is particularly appropriate with gifted students because of its emphasis on critical thinking and independent learning. Steps in the case study approach are reviewed, and a sample classroom application of the approach is offered.

Project ACE Activity Sets: Book III, Grades 8 through 12 (Raleigh, NC: Durham, Eden City, Greensboro, and Wake County Schools, 1979). 289 pp. ED 184 973. EDRS price: MF-$0.97/PC-$21.40.

This guide presents 11 activity sets designed to supplement citizenship, history, and government courses in grades 8-12. Among the topics covered are the causes of the Civil War, history on television, New Deal reforms, and law in the old West.

"Social Studies: Law Education," Curriculum Review 18, no. 2 (May 1979), pp. 161-170. EJ 215 502. Journal available from Curriculum Advisory Service, 517 South Jefferson Street, Chicago, IL 60607.

This article reviews series, texts, supplements, kits, and professional references for law instruction. Topics are civil and criminal law, the Bill of Rights, and controversial legal issues. The emphasis is on secondary-level materials.

Thomas, Ruth and Susan Roberts, New Mexico Courts: Information and Ideas for Teaching (Albuquerque, NM: New Mexico Council for the Social Studies, New Mexico Law-Related Education Project, and New Mexico State Department of Education, 1980). 90 pp. ED 210 206. EDRS price: MF-$0.97/PC-$7.40.

This handbook provides background information and classroom activities that teachers can use to help students in grades 6-8 understand the New Mexico court system. A great deal of the information provided can also be used by teachers in other states. The information and activities can be incorporated into such curricular areas as civics, U.S. history, government, and general social studies.

Turner, Mary Jane, Law in the Classroom (Boulder, CO: Social Science Education Consortium and ERIC Clearinghouse for Social Studies/Social Science Education, 1979). 333 pp. ED 179 468. EDRS price: MF-$0.97/PC-$24.90. PC also available from SSEC Publications, 855 Broadway, Boulder, CO 80302 ($20.00).

This comprehensive guide provides activities and resources that teachers and resource persons--particularly attorneys--can use in teaching about the law. Detailed guidelines and support materials for using such strategies as case studies, mock trials, moot courts, pro-se courts, brainstorming, dilemmas, surveys, games, and field trips are given.

U.S. Constitution and Its Development, The (New Haven, CT: Connecticut Council for the Social Studies and Yale University, 1976). 70 pp. ED 137 161. EDRS price: MF-$0.97/PC-$5.65.

This report presents eight articles teachers can use in planning and implementing materials on development of the U.S. Constitution. Among the topics covered are teaching and understanding legal terms, reasoning, analysis, and rules; the English roots of American constitutionalism; rights of women under the Constitution; and the history of the Supreme Court's handling of cases related to education.

White, Charles, "When a Trial Becomes a Political Circus: Cases That Brought Our Court System to the Breaking Point," Update on Law-Related Education 5, no. 1 (Winter 1981), pp. 10-13, 41-48. EJ 243 079. Journal available from American Bar Association, 1155 East 60th Street, Chicago, IL 60637.

White reviews blatantly political litigation during the 19th and 20th centuries in the United States. He questions the extent to which political influences in the courtroom pose a threat to the administration of justice. Cases include anarchist trials of the late 1800s, the Debs case, and the Sacco-Vanzetti case.

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